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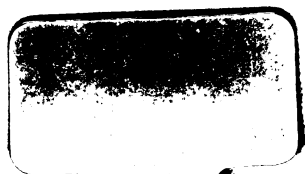


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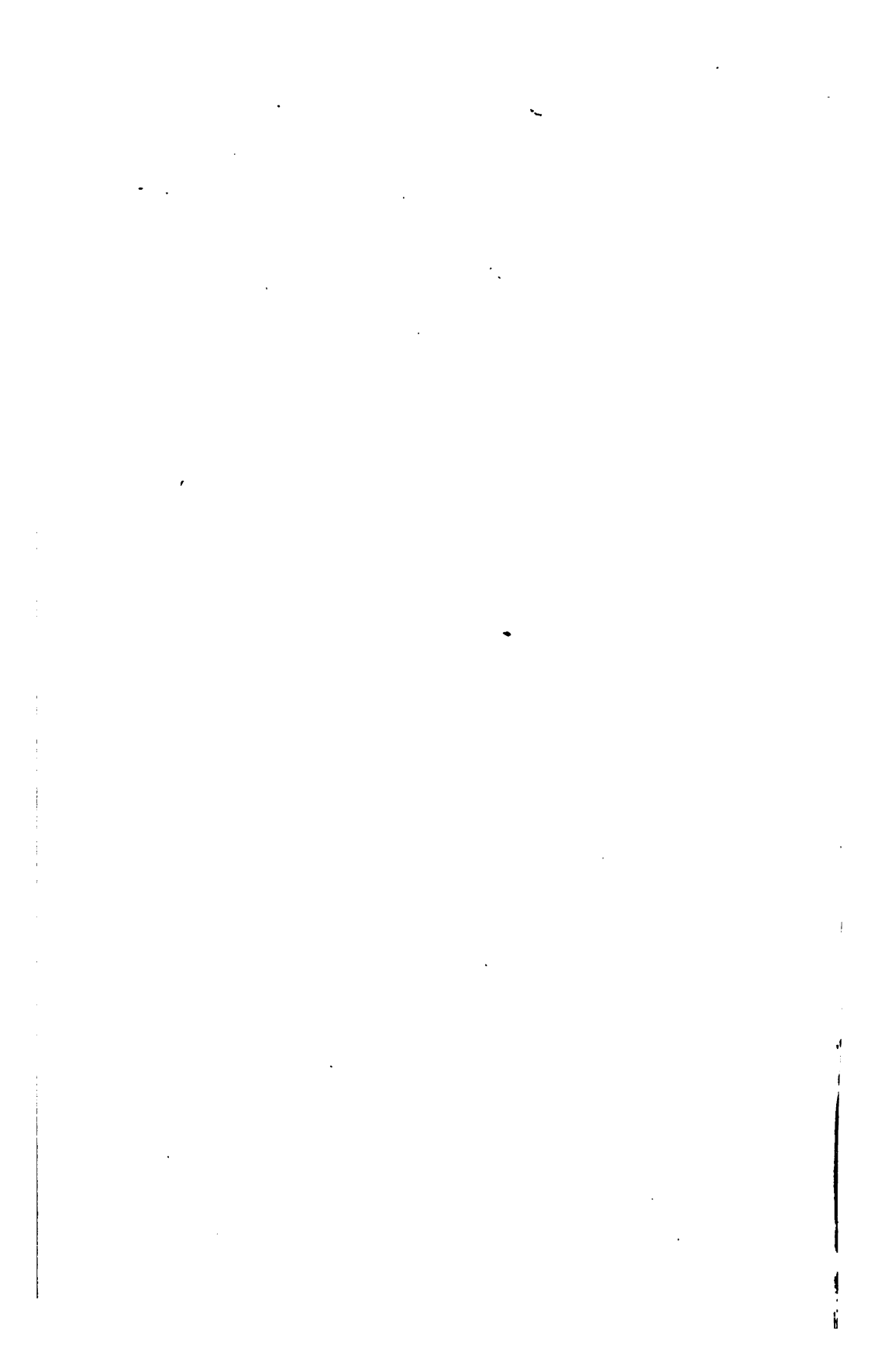
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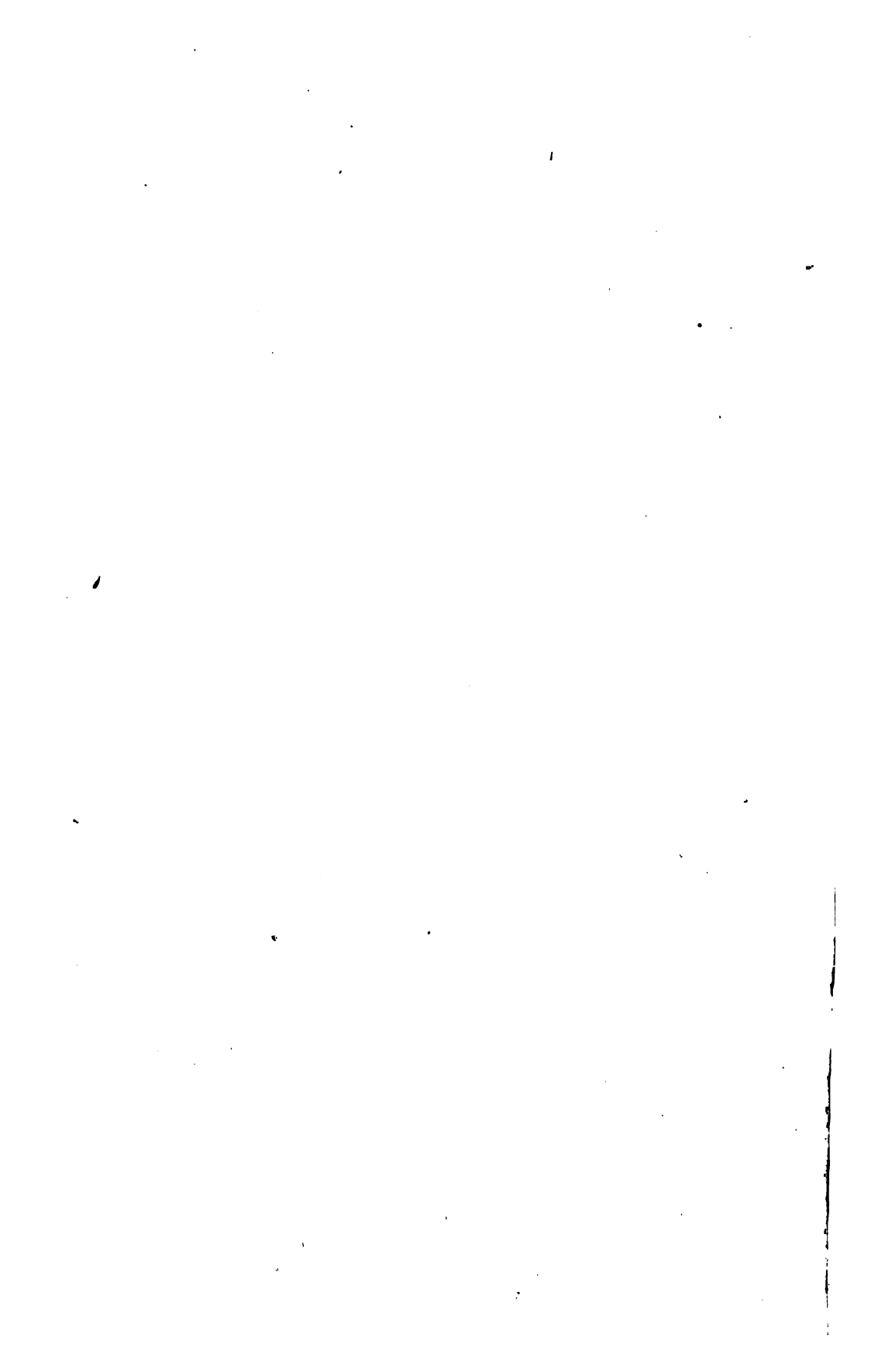


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PROVINCIAL COURTS OF NEW JERSEY.



THE
PROVINCIAL COURTS
OF
NEW JERSEY,
WITH
SKETCHES OF THE BENCH AND BAR.

A DISCOURSE,

READ BEFORE THE NEW JERSEY HISTORICAL SOCIETY,

BY

RICHARD S. FIELD.
//

NEW-YORK:
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P R E F A C E .

THE following Paper was prepared at the request of the Executive Committee of the New Jersey Historical Society. A portion of it was read at the annual meeting in Trenton, on the twentieth of January, 1848, and the residue at a meeting in Newark, on the twenty-fifth of May following. It was written without the slightest view to its being published, at least in its present form. While it was hoped, that it would not be altogether without value in the eyes of my professional brethren, to whom it was more particularly addressed, it was not supposed that the subject was one in which the public at large could be made to take much interest. The Society, however, having requested a copy for publication, I have not felt myself at liberty to withhold it.

My object has been, not so much to bring together what is already known, with regard to our Courts, and the character of those who have figured on the Bench and at the Bar, as to rescue from the past such scattered memoirs of them as were in danger of perishing for ever. I

have confined my researches therefore entirely to our *Provincial* Courts, and *Colonial* judges and lawyers are the only ones whose characters I have attempted to sketch. To those, whose attention has been turned to the subject, I need scarcely say, how slender are the materials which exist for such a work, and how meagre are the accounts which have come down to us, even of those who were the most distinguished in the early periods of our history. We know more, I suspect, of the early settlers of Massachusetts and Virginia, than we do of those who first planted the Colony of New Jersey. I am sure we know more of the lawyers and judges of England prior to the American Revolution, than we do of those of our own State. We are much more familiar with the personages who graced the Court of Queen Anne, than with those who flourished here at the same time under the rule of her kinsman Lord Cornbury.

I have been astonished too to find, how few of the names of distinguished Jerseymen are to be met with in the American Biographical dictionaries. While they abound with ample notices of second and third rate men of other sections of the country, those who have been truly eminent among us, seldom find a place in them. The truth is, our Biographical dictionaries have, for the most part, been written by New England men, and, as it would seem, for New England. We ought to have a Biographical dictionary of our own, and it may be worthy of consideration, whether a work of this description should not be undertaken under the auspices of our Historical Society.

But we have no right to complain of others, for not

cherishing the memory of our distinguished men. The fault is our own. We have never been true to ourselves. We have suffered the brightest names in our annals to grow dim, and the memory of our most glorious deeds to become almost effaced. While there is so much in our past history, and in our present condition, for which we should be grateful, and in which we have a right to exult, yet we have very little State pride; and while we have been distinguished, beyond most others, for devotion to our common country, and loyalty to the Union, we have never exhibited much local patriotism. These, I am aware, are qualities, which may easily be carried to excess. They are virtues, which are perhaps nearly allied to vices; but they are virtues still, and, to a certain extent, deserve to be strengthened and fostered.

What we more especially need at this time, is a well written history of our State. Mr. Whitehead's work is invaluable, as far as it goes; but it is confined to East Jersey, and comes down only to the surrender of the government to the crown, in 1702. When shall we have an equally faithful and accurate history of the whole State, from its first settlement to the adoption of the Constitution of 1844? Such a work remains to be written, and when it is, it will be found, if I mistake not, to possess an interest, which has never been thought to attach to the annals of our State. Bancroft, in his History of the United States, has touched upon the affairs of New Jersey just enough to show, how attractive they are capable of being made in the hands of a man of taste and genius.

Take, for instance, the settlement of West Jersey by

the Quakers. What a beautiful picture would it not present, if drawn by the pen of a master! West Jersey under its Proprietary Government was, in fact, what Pennsylvania was only in name, a pure Quaker Commonwealth. It may be safely affirmed, that William Penn himself had more to do in moulding the institutions of West Jersey, that his spirit was more deeply infused into them, and that they reflected more clearly the pure and benign features of his character, than did those of the State which bore his name. In Pennsylvania, his views were often sadly thwarted, and his gentle sway was regarded with a jealousy and distrust, which it is difficult for us at this day to understand. But in West Jersey, his influence was supreme, his benevolent disposition was allowed free scope, and he was the object of unbounded love and confidence. Her Concessions and Agreements, her fundamental laws and Constitution, were nearly all the work of his hand; all bear the impress of his character.

So too the Revolutionary history of New Jersey; how full of exciting scenes, how rich in thrilling incidents would it be! The sacrifices made by New Jersey, in blood and treasure, during the war of Independence, were greater, in proportion to her wealth and population, than those of any other Colony. The fury of the storm first burst upon her, and her territory was speedily overrun by hordes of foreign mercenaries. Within her borders were the most memorable, and the most glorious battle-grounds of the Revolution. She was enveloped in the darkest clouds of the contest, and the first gleams of a brighter day dawned upon her. Here Washington encountered his

deepest distresses, and sustained his heaviest misfortunes; but here too he made his most brilliant movements, and achieved his proudest triumphs. This is a chapter in American history which has never yet been written, but which we may hope soon to see from the pen of Mr. Bancroft.

I cannot close these prefatory remarks, without acknowledging the many obligations which I am under to Mr. William A. Whitehead, the Corresponding Secretary of the New Jersey Historical Society, for the valuable assistance which he has rendered me in the prosecution of my researches. His intimate acquaintance with the history of New Jersey, has enabled him to furnish me with much information that could have been obtained from no other source. To Mr. Edward Armstrong, too, the Recording Secretary of the Pennsylvania Historical Society, I am greatly obliged. To the copious extracts from the "Logan Papers," with which he has so kindly furnished me, am I indebted, for most of the particulars in the life of Roger Mompesson, the first Chief Justice of New Jersey.

Princeton, New Jersey, December 28th, 1848.

ERRATA.

Page 127, line 17, for "ever" read even.

" 158, line 12, for "Smyth" read Smith.

" 178 note, for "father" read uncle, and for "son" read nephew.

DISCOURSE.

GENTLEMEN OF THE HISTORICAL SOCIETY :

IN consenting to prepare for the use of the Historical Society a brief history of the Courts of New Jersey, with notices of some of the more distinguished members of the Bench and Bar, nothing was further from my expectation than to be called upon to read it upon such an occasion as this.¹ Could I have anticipated such an audience, I might have sought a more attractive theme upon which to discourse—a subject the discussion of which I might have hoped to make interesting to all—rather than one which addresses itself in a peculiar manner to the members of a single profession. And yet, in attempting to glean from the history of the past something worthy of the attention of this Society,

¹ The annual meeting of the New Jersey Historical Society, at which it has been customary for an address to be delivered of a somewhat more popular character, than the Historical papers usually read before the Society.

I would have felt that it was much safer for me to seek for it along those paths which I am accustomed to frequent, rather than to explore fields to me new and untrodden, and where I could hardly hope to find any thing which had eluded the researches of those who had gone before.

But however little there may be in the subject of my discourse to interest the feelings or excite the fancy, let me not be understood as meaning in the slightest degree to undervalue its importance. On the contrary, I am persuaded, there is no portion of the history of our State—rich as it is in the materials both for pleasant and profitable meditation—in the study of which we can be more usefully employed, or in the contemplation of which we can feel a more honest pride, than in that which pertains to the administration of justice. The story of our battle-fields, the recital of the martial deeds of our ancestors, may be more stirring; but the feelings which such scenes awaken are transient, and their influence has long since ceased to be felt. Whereas, to trace to their source the growth of laws and institutions under which we now live; to look at the foundations upon which have been raised temples of justice still standing; and to gather up what remains of the life and character of those who have ministered at their altars, if it has

less to excite, will yet be found to possess a present and an enduring interest. In truth, the great end for which all government is instituted, is neither more nor less than the administration of Justice. It is for this, that men consent to forego the exercise of their natural rights, and to submit to those restraints which society imposes. "He," says Lord Brougham in his celebrated speech on law reform,¹ "He was guilty of no error—he was chargeable with no exaggeration—he was betrayed by his fancy into no metaphor, who once said, that all we see about us, King, Lords, and Commons, the whole machinery of the State, all the apparatus of the system, and its varied workings, end in simply bringing twelve good men into a box."² And if this

¹ Delivered in the House of Commons February 7, 1828. *Lord Brougham's Speeches*, II. 324. An American lawyer cannot read this admirable speech without being led to remark, that most of the improvements which are suggested in the state of the law, and the method of procedure in Courts of Justice, had already been adopted in this country, and were then in successful operation. And yet, while there are allusions to the laws of so many other countries scattered throughout the speech, there is not the slightest reference to the United States.

² The same idea is expressed by Hume in his *Essay on the Origin of*

Government. "We are therefore to look upon all the vast apparatus of our government as having ultimately no other object or purpose but the distribution of justice, or in other words, the support of the twelve judges. Kings and parliaments, fleets and armies, officers of the court and revenue, ambassadors, ministers, and privy-counselors, are all subordinate in their end to this part of administration. Even the clergy, as their duty leads them to inculcate morality, may justly be thought, so far as regards this world, to have no other useful object of their institution."—*Hume's Essays*, I. 63.

be true in any sense in other countries, it must be emphatically so here, where we may, in a peculiar manner, be said to live under the government of law.

The history of New Jersey naturally divides itself into three periods ; from the first settlement by the English to the surrender of the government to the crown ; from the surrender to the Revolution ; and from the Revolution to the present time. Or, in other words, New Jersey is to be viewed under a *proprietary* government, as a *Colony*, and as a *State*. It is to the period which preceded the surrender, and when East and West Jersey were under distinct proprietary governments, that we are first to direct our attention.

The establishment of Courts of Justice is almost coeval with the first settlement of the State. While in the more populous and important Province of New York, we find Governor Nichols, during the whole of his administration, deciding alone, and in a most summary way, all controversies that arose ;¹ in East Jersey, on the other hand, consist-

¹ " He created," says the Historian of New York, " no courts of justice, but took upon himself the sole decision of all controversies whatsoever. Complaints came before him by petition, upon which he gave a day to the

parties, and after a summary hearing, pronounced judgment. His determinations were called edicts, and executed by the sheriffs he had appointed."—*Smith's New York*, 55.

ing though it did of a few feeble and scattered settlements, whose only security against the inroads of the savage was in the respect with which his right to the soil was always treated,¹ we find the most ample provision made for the distribution of justice between man and man, through the instrumentality of Courts, and by the intervention of a jury. By the concessions of Berkley and Carteret, the original proprietors of New Jersey, the power of erecting Courts and of defining their jurisdiction, was conferred upon the General Assembly. This body convened, for the first time in the history of New

¹ It must be a source of no ordinary gratification to Jerseymen to reflect, that the soil of their State has never been stained with the blood of the Indian, nor an acre of her territory obtained by violence or fraud. Well has she merited the distinguished honor paid to her by the Six Nations at a Convention held at Fort Stanwix in 1769, when in the most solemn manner they conferred upon New Jersey the title of the *Great Doer of Justice*.

When the Legislature was applied to in 1832, by a remnant of the Delaware tribe, to purchase certain rights of fishing and hunting which had been reserved to them by an ancient treaty, Mr. Southard, in advocating the claim, truly observed, "That it was a proud fact in the history of New Jersey, that every foot of her soil had been obtained from the Indians by fair and

voluntary purchase and transfer—a fact, that no other State of the Union, not even the land that bears the name of Penn, can boast of." And in returning thanks to the Legislature for its liberality upon that occasion, an aged Indian, who represented the Delawares, thus spoke: "Not a drop of our blood have you spilled in battle—not an acre of our land have you taken but by our consent. These facts speak for themselves, and need no comment. They place the character of New Jersey in bold relief and bright example to those States, within whose territorial limits our brethren still remain. Nothing save benizens can fall upon her, from the lips of a Lenni Lenappi." Well may we exclaim on behalf of New Jersey, "The blessing of him that was ready to perish came upon me."

Jersey, in 1668, in Elizabethtown, fifteen years, by the way, in advance of any similar Assembly in the Province of New York. It held, however, only two Sessions of four days each, and passed but few laws; and such was the unsettled state of the Province, that seven years elapsed before another Assembly met.¹ So that it was not until 1675, that we are to look for the first establishment of Courts of Justice in New Jersey by legislative enactment. Prior to this, however, and as early as 1668, we find Courts existing both at Bergen and Woodbridge;² and it was to these tribunals that Governor Carteret appealed, and their protection which he invoked, during the troubles which followed that memorable day, when Quit Rents first became due. But these were mere local or municipal Courts, erected by the Corporations of those towns, in virtue of the authority granted them by their charters. Governor Carteret, indeed, sought to extend their jurisdiction and to strengthen their arm, by author-

¹ Whitehead's East Jersey, 52, 53.

² Courts of Justice were also instituted in Monmouth as early as 1667, under the patent granted by Colonel Nichols, "Governor under his royal highness the Duke of York of all his territories in America." These Courts held their sessions first at Portland Point, and afterwards alternately at

Shrewsbury and Middletown. But the twelve Patentees of Navesink were not long permitted by the Lords Proprietors, to exercise the powers thus conferred upon them by his royal highness's governor; and the Courts thus erected soon ceased to exist.—*Proceedings of N. J. Hist. Soc.*, vol. i. p. 167.

izing them to try all causes brought before them, although the parties might come from beyond the limits of their respective towns. This, however, was a questionable exercise of power; and, at all events, these Courts proved themselves entirely too feeble to quell the disturbances and repress the disorders that ensued.¹ For the first, and I may add, the last time in the history of New Jersey, the laws were silent, and anarchy reigned supreme.

But in 1675, when the next Assembly met, one of the very first acts that was passed provided for the establishment and maintenance of Courts of Justice throughout the Province.² There was to be, in the first place, a monthly Court of small causes for the trial of all matters under forty shillings. This Court was to be held on the first Wednesday of every month, in each town of the Province, by two or three persons, to be chosen by the people, of whom a Justice of the Peace was to be one.³ Then, there were the County Courts or Courts of Sessions, to be held twice a year in every county,⁴ the Judges

¹ Whitehead's East Jersey, 55.

² Grants and Concessions, p. 96.

³ The officers of the Court were to be a clerk and a messenger, and upon the recovery of a debt, if the defendant were a poor man, the Court was empowered to give "time and space for the payment thereof." This,

no doubt, was the origin of that *stay of execution* which has always been a distinguishing feature in our Courts for the trial of small causes.

⁴ No formal division of the Province into counties had yet been made, but it was provided in the act constituting Courts of Sessions, that Bergen and

of which were also to be elected out of the county to which the Court belonged. In these Courts were directed to be tried "all causes actionable," terms certainly very comprehensive, and which would seem to have conferred unlimited jurisdiction. No appeals were to be granted from their judgments under the sum of twenty pounds, "except to the Bench, or to the Court of Chancery." By the "Bench" was meant, undoubtedly, the Court of Assize, which was a Provincial Court, directed to be held once a year in the town of Woodbridge, or where the Governor and Council should appoint. This was the Supreme Court of the Province; but from it appeals would lie to the Governor and Council, and from them in the last resort to the king.

Such were the first Courts established in the Province by act of Assembly; and they are interesting from the fact, that in them we may trace the germ of our present admirable judicial system. The monthly Courts of small causes was the original of our Justice's Court, that most useful and convenient tribunal, by which justice is literally brought home to every man's door, and controver-

the adjacent plantations should be taway a third; and the two towns of
one county; Elizabethtown and New- Navesink a fourth county.
ark another; Woodbridge and Pisca-

sies of small moment adjusted, without the expense and delay incident to the proceedings of our higher Courts. It was, in fact, the revival, in an improved form, of those ancient common law Courts of inferior jurisdiction, which had long before fallen into disuse in England, and the loss of which has been felt and lamented to the present day.¹ Such were the Hundred Courts, and the County Courts of the Anglo Saxons, the beneficent fruits of the genius of the great Alfred. Such was the Court of Piepoudre, so called, as we are told, from the dusty feet of the suitors; or, as Sir Edward Coke fancifully supposes, because justice was administered in them as speedily as dust falls from the feet.² We are so fa-

¹ As early as the reign of Henry the Seventh, these inferior local tribunals had in a great measure gone into disuse in England. But, as Mr. Hallam observes, "though the reference of every legal question, however insignificant, to the Courts above, must have been inconvenient and expensive in a still greater degree than at present, it had doubtless a powerful tendency to knit together the different parts of England, to check the influence of feudality and clanship, to make the inhabitants of distant counties better acquainted with the capital city, and more accustomed to the course of government, and to impair the spirit of provincial patriotism and animosity." — *Hallam's Constitutional Hist. of England*, I. 5.

Of late, however, efforts have been made in England to supply the place of these ancient Courts. Public attention was called to the subject by Lord Brougham, in his speech upon Local Courts delivered in the House of Commons in 1830. And the evils which he complained of have in some measure been remedied by the statute of 3 and 4 William IV, cap. 42, which, in cases where the debt or demand does not exceed twenty pounds, authorizes a trial to be had before the sheriff instead of a judge at *Nisi Prius*.—See *Lord Brougham's Speeches*, II. 489.

² 3 Black Com., 32; 4 Co. Ins., 272.

miliar with these humble tribunals, they are so noiseless and unobtrusive in their operations, that we are apt to be insensible to their benefits; nor do we realize the extent to which they have cheapened justice, and made law, instead of being the "patrimony of the rich," "the inheritance of the poor."¹ The judges of these monthly Courts, we have seen, were chosen by the people. In providing therefore for the election of Justices of the Peace, under our new Constitution, we seem to be returning more nearly to this primitive model of a Court for the trial of small causes. In the county Courts or Courts of Sessions, exercising as they did both civil and criminal jurisdiction, we see shadowed forth our present Courts of Common Pleas and Quarter Sessions. The Court of Assize corresponded with our Supreme Court, while the Governor and Council were at that early day, what

¹ By a return made to the House of Commons in 1837, it was ascertained that for a period of two years and a half, there had been 93,000 affidavits of debt filed in the King's Bench and Common Pleas, and of these, 29,800, or about one-third, were for sums under £20. Of fifty verdicts taken at one of the assizes in England some years ago, it was found that their average amount was something less than £14; and it was stated upon high authority in the House of Commons, that this

was not much out of the general course. The costs of each of these verdicts was estimated to have been not less than £80. In New Jersey all these cases, where the amount in controversy does not exceed £20, or \$100, would fall within the jurisdiction of our Courts for the trial of small causes, and to compel parties to resort to the higher Courts would in very many instances amount to a denial of justice.

they have continued to be ever since, until the adoption of our new Constitution, the highest Court of Appeals in the Province. The existence of a Court of Chancery as a separate and distinct tribunal was also recognized, showing plainly that it was from the wells of English law that our fathers drew their ideas of jurisprudence.

These Courts were somewhat modified in 1682, after the transfer of East Jersey to the twenty-four Proprietors.¹ In the Court for the trial of small causes, either party was to be at liberty to demand a jury. So sacred was that mode of trial deemed, that no man was to be denied the benefit of it, even in the smallest matter. East Jersey was divided into four Counties,² Bergen, Essex, Middlesex, and Monmouth; and the County Courts were directed to be held four times a year in each County.³ The

¹ Grants and Concessions, p. 229.

² It was not until 1692, that Counties were first subdivided into Townships. In Bergen but one Township was created, called *Hackensack*, besides which there was the "Corporation Town" of *Bergen*. *Essex* was divided into three Townships; the first was called *Aquackanick* and *New Barbadoes*, the second *Newark*, and the third *Elizabethtown*. *Middlesex* was divided into the "Corporation Town" of *Woodbridge*, and the Townships of *Perth Amboy* and *Piscataway*; and *Monmouth* into the

Townships of *Middletown*, *Shrewsbury*, and *Freshhold*.—*Grants and Concessions*, p. 328.

³ In *Essex* they were to be held alternately, at *Newark* and *Elizabethtown*; in *Middlesex*, at *Woodbridge* and *Piscataway*; in *Monmouth*, at *Middletown* and *Shrewsbury*.

Middlesex, however, was soon divided, the County of *Somerset* being formed out of a portion of it, in 1688. The reason assigned for the division is a whimsical one. It was because the uppermost part of *Raritan River* was settled by persons who, in the

Judges were to consist of the Justices of the Peace in the respective Counties, or three of them at the least. A High Sheriff in each County was now for the first time provided for, and all process out of the County Courts was to be directed to him. A change, too, was made in the name of the Supreme Court. Instead of the Court of Assize, it was to be called the Court of Common Right. Heretofore, the titles of all the judicial tribunals in the Province had been borrowed from the English Courts, and were familiar to the Common Law. But a Court of Common Right was something entirely new. The name first occurs in the instructions of Robert Barclay and other Proprietors to the Deputy Governor, Gawen Lawrie; "We do require this, one thing concerning the Court of Common Right, that it be always held at our Town of Perth, if it be possible."¹ Now Robert Barclay and many of the other Proprietors, as is well known, were Scotchmen; and when we add the important fact, that this Court, under its new organization, was empowered to try and determine

husbandry of their land, were forced upon quite different ways and methods from the other farmers and inhabitants of the County of Middlesex, because of the frequent floods that carried away the fences on their meadows, and so by consequence their interest

was divided from the other inhabitants of the said County.—*Grants and Concessions*, p. 305. A more obvious reason would seem to have been the inconvenient size of the County.

¹ *Grants and Concessions*, p. 199.

causes in Equity as well as at Common Law, we shall have no difficulty in discerning the influence of those who were more familiar with Scottish than with English jurisprudence. For in Scotland, as most of you are doubtless aware, a Court of Equity, as distinct from a Court of Law, and under the administration of different Judges, has never formed a part of their system. This Court of Common Right was to consist of "twelve members, or six at the least," and was to be held four times a year, and at Elizabethtown,¹ notwithstanding the injunction contained in the instructions of the Proprietors that it should be held at Perth. The ancient Borough of Elizabethtown, named after the "fashionable and kind-hearted" Lady Carteret, and which had so long enjoyed the distinction of being the capital of the Province, was not inclined, without a struggle, to surrender its dignity in favor of the new town named in honor of the Earl of Perth, and which, however glorious might be its future, then existed only in imagination. It was not until 1686, that the Court was directed to be held at Perth Amboy, the inhabitants of the Province having by that time become sensible, as the act declared, "that Amboy was more

¹ Grants and Concessions, p. 232.

conveniently situated, near the centre of the Province, the most encouraging place for trade and traffic by sea and land, and which would occasion great concourse of people."¹ It was, as we have said, to be a Court of Equity as well as of Common Law. But it was subsequently stripped of its Equity powers. For in 1695, we find the General Assembly in a solemn act declaring what were "the rights and privileges of His Majesty's subjects inhabiting within the Province of East New Jersey," enacting, among other things, that the Judges of the Court of Common Right should not be Judges of the High Court of Chancery. This, we may remark, is the only instance to be found in the history of our judicial system, in which the powers of an Equity and a Common Law Court have ever been blended in the same tribunal. And the experiment does not appear to have been a successful one.

So much for the Courts of East Jersey, under its Proprietary government. And now, it may be asked, what were the laws which these Courts were called upon to administer, and in what way were their proceedings regulated? And the first thing

¹ Grants and Concessions, p. 293. for the object of their solicitude a destiny which has never been realized." — *Whitehead's East Jersey*, 108.

which strikes our attention is, how very few in number, and how very simple in their provisions, the early legislative enactments were. For example, laws were passed for the erection of Courts of Justice, designating their titles, defining their jurisdiction, and prescribing the number of Judges ; but as to the manner in which their business was to be conducted, by what rules they were to be governed, and how their sentences were to be enforced, nothing whatever was said. An act of Assembly required that there should be a High Sheriff in every County, but it was silent as to his powers and duties. In the same manner provision is made for Grand Juries, who were to present all offences against law ; but we have not a word as to the persons of whom they are to be composed, or the authority by which they are to be convened, or as to their methods of procedure. These laws standing alone, unexplained and uninterpreted, would not merely have been a dead letter, but a perfect enigma. But by whom were they to be unfolded, and as it were deciphered ? Were the Judges to do it at their discretion ? Was the secret to lie in the breast of the Court ? No : as well have had no laws. But, be it remembered, our fathers brought with them from England the common law. It was their birthright, their inheritance ; and they transplant-

ed it along with themselves to this congenial soil, where it at once took root and flourished. Its ample folds covered all the nakedness of our primitive enactments. Its abundant resources supplied all their deficiencies. It furnished the key with which to unlock the hidden meaning of the statute.

And they brought with them, too, the common law, not as it was after the Norman Conquest, burdened with the oppressive features of the feudal system; not as it existed under the Tudors, when the prerogatives of the crown lorded it over the rights of the people; or in the reigns of James and Charles the First, with its star-chamber and high commission Court, its forced loans and benevolences, its ship-money and arbitrary imprisonment; but the common law, in the state to which it was brought during the reign of the second Charles, purified from the corruptions and redeemed from the abuses which long ages of tyranny and misrule had engrafted upon it. For it was in the reign of Charles the Second, stained though it was with blood and crime, and at the very period of the first settlement of New Jersey, that the common law of England reached its highest state of vigor and perfection.¹ It was then that the *habeas corpus* act, and

¹3 Black. Com. The opinion expressed by Blackstone, that in the reign of Charles II, "wicked, sanguinary, and turbulent as it was, the

the act abolishing feudal tenures, were passed, acts which, as it has been said, formed a second *magna charta*, more beneficial and efficacious than that of Runnymede. That but pruned the luxuriance of feudal tenures, and lopped off some of their excrescences; whereas the act of 12th Charles II laid the axe at their very root. *Magna charta* but declared that no man should be unlawfully imprisoned; the *habeas corpus* act furnished him with the means of obtaining instant relief from such imprisonment.¹ The Revolution of 1688 gave no additional security to the private rights and personal liberties of Englishmen. It was itself but one of

constitution of England had arrived to its full vigor, and the true balance between liberty and prerogative was happily established by law," may at first view appear paradoxical, and I am aware that its correctness has been frequently called in question. But it is substantially confirmed by Hallam, who, upon a question of this kind, must be deemed the very highest authority. After reviewing the prominent events of this reign, he observes: "It may seem rather an extraordinary position, after the last chapters, yet is it strictly true, that the fundamental privileges of the subject were less invaded, the prerogative swerved into fewer excesses, during the reign of Charles II, than perhaps in any former period of equal length. Thanks to the patriot energies of Selden and Eliot, of Pym and

Hampden, the constitutional boundaries of royal power had been so well established that no minister was daring enough to attempt any flagrant and general violation of them."—*Hallam's Constitutional Hist. of England*, vol. iii. chap. 1.

It must be remembered, too, that it was in the reign of Charles II, that a Hale presided in the Court of King's Bench, and a Nottingham sat upon the Woolsack.

¹ The "Statute of Distributions," making a most equitable disposition of personal property in case of intestacy, was also passed in this reign; and that "most important and beneficial piece of juridical legislation," the famous "Statute of Frauds," of which Lord Nottingham used to say, "that every line of it was worth a subsidy."

the fruits of those glorious principles, the triumph of which had already been achieved, and which were cheaply purchased by all the blood that had been shed, and all the follies and crimes that had been engendered, by the great Rebellion.

But besides the Common Law, which formed the basis of our jurisprudence and regulated the proceedings of our Courts, there were the Concessions of the first Proprietors, Berkley and Carteret. These formed the first Constitution of New Jersey. I need scarcely tell you it was a free Constitution; the only kind of Constitution under which the people of New Jersey have ever been willing to live. It proclaimed religious liberty in its fullest extent. "No man shall be molested, disquieted, or called in question, for any difference of opinion or practice in matters of religion, throughout the Province." It proclaimed freedom from taxation without the consent of the people. "No tax, custom, or duty whatsoever, upon any color or pretence, shall be imposed upon the inhabitants of the said Province, but by the authority of the General Assembly." In short, it guarantied complete security of person and property, under laws to be enacted by an Assembly composed of the Governor and Council, and at least an equal number of the rep-

representatives of the people.¹ Strange, that a Constitution so free should have emanated from the profligate courtiers of Charles the Second; men who were wont to scoff at the rights of the people, and who loathed the very name of liberty! It was in truth, as has been well remarked, "the homage paid by avarice to freedom." New Jersey was at that time a mere wilderness, tenanted only by a few wandering tribes of savages. To make it of any value to its Proprietors, it was absolutely necessary that it should be peopled; and a speedy settlement could alone insure a quick return. It had no mines of gold or silver to invite the cupidity of adventurers. Other lands more fair and fertile, and equally accessible, were open to the emigrant. Hence, settlers were to be allured by tempting offers of the largest liberty. The Concessions were published and circulated both in England and throughout the Colonies. Emissaries were sent to New England to proclaim, that beyond the Hudson was to be found a safer and a securer asylum for freedom; and Puritans were soon seen flocking to the banks of the Passaic and the Raritan.

Something may perhaps be expected as to the

¹ Grants and Concessions, p. 12-26.

state of the legal profession under the Proprietary Government, and of those who figured on the Bench or at the Bar. Alas, that the materials for such a work are so few, and that each successive year but adds to the difficulty of rescuing from oblivion the memorials of those early days! But were the means of information more ample, they would perhaps prove more curious than useful, and would contribute rather to our entertainment than our instruction. The proceedings of the Courts were marked by the utmost simplicity, and by an almost entire absence of that ceremony and parade which distinguished them during the Colonial government, when the judges of the higher Courts, clad in their gorgeous robes,¹ affected a degree of state, which would have been as repugnant to the severe tastes of those who lived under the proprietary rule, as to the republican notions of our own day. The pure and excellent Thomas Olive, sometime Governor of West Jersey, was in the habit of dispensing justice "sitting," says the historian, "on the stumps

¹ The costume worn by the judges prior to the Revolution, was probably assumed by them immediately after the Surrender, when they were first appointed by royal authority. It consisted of scarlet robes with deep facings, and cuffs of black velvet; bands, and powdered wigs, adorned with black silk bags. In summer black silk gowns were worn. The lawyers also wore black silk gowns, and sometimes bands and bags. These official robes were resumed to some extent after the Revolution, but towards the close of the last century they fell into disuse.

in his meadows.”¹ What a striking and interesting picture does this present of those primeval times! How emblematic, as it were, of heaven-descended justice, newly alighted upon this spot, where the forest had just been felled and the wilderness subdued!

Nor was the business of the Courts—if we may judge from the few cases which have been handed down to us—of much interest or importance. Petty disputes and frivolous controversies would seem to have occupied much of their time. May I be pardoned for saying, that—what shall I call it—a fondness for litigation, or a love of law, or a desire to be in and about courts of justice, has always formed a somewhat prominent trait in the character of the people of New Jersey. But in this perhaps they are not peculiar. At a later period in our history, Mr. Burke, speaking of the Colonies generally, declared in the House of Commons, that in no country in the world was the law so general a study, and that every man who was able to read endeavored to obtain some smattering in that science. He had been told, he said, by an eminent bookseller, that in no branch of his business, after tracts of popular devotion, were so many books as

¹ Smith's N. J., 209.

those on the law exported to the Colonies. And it was to this disposition that he ascribed the fact, that while in other countries the people were in the habit of judging of an ill principle only by an actual grievance, here they anticipated the evil, and judged of the pressure of the grievance by the badness of the principle, auguring misgovernment at a distance, and snuffing the approach of tyranny in every tainted breeze.¹

But we are not from this to suppose, that at the early period of which we are now speaking, those who were lawyers by profession composed a very large class of the community. On the contrary, if we may believe Oldmixon, there was a time when New Jersey was deemed worthy the name of Paradise, because, in addition to its natural advantages, it was blessed by the absence of lawyers, physicians, and parsons.² And, as if for the purpose of

¹ Speech on Conciliation with America. *Burke's Works*, II. 36. "This study," he adds, "renders men acute, inquisitive, dextrous, prompt in attack, ready in defence, full of resources."

² Oldmixon's *Brit. Empire*, I. 144.

Gabriel Thomas too, in his *Historical and Geographical Account of Pennsylvania and West New Jersey*, thus discourses irreverently of the Profession: "Of Lawyers and Physicians I shall say nothing, because this country is very peaceable and

healthy; long may it so continue, and never have occasion for the tongue of the one nor the pen of the other, both equally destructive to men's estates and lives." This little work was first published in 1698, and is dedicated to "Friend William Penn." The author terms it a "plain and peasant-like piece," and assures us he was prompted to write it by "no plot in his pate, or deep design," an assurance which no one who reads it will be disposed to question.

perpetuating this blissful state of things, at least so far as lawyers were concerned, the Fundamental Constitutions of the twenty-four proprietors of East Jersey provided, that in all Courts, persons of all persuasions, might freely appear in their own way, and there plead their own causes themselves, or if unable, by their friends; and that no person should be allowed to take money for pleading or advice in such cases.¹ But this happy exemption was not of long continuance. Lawyers, as well as parsons and physicians, soon found their way into this Eden. For in 1694, we find an act of Assembly for the regulation of Attornies at Law within the Province, and which prohibited Justices of the Peace, Sheriffs, and Clerks of the Courts, from acting as Attornies under the penalty of twenty pounds.² And in 1698, Governor Basse was instructed to procure the passage of a law, by which no Attorney or other person should be suffered to practice or plead for fee or hire in any Court of Judicature, unless he had been regularly admitted to practice by license from the Governor.³ In fact, there existed in the Province of East Jersey, at a very early day, a most prolific source of strife and litigation, and one that called loudly for the ser-

¹ Grants and Concessions, p. 153.

² Ibid, p. 223.

³ Ibid, p. 343.

vices of lawyers. I allude to the conflicting claims of those who held lands under grants from the Indians, and those who deduced their titles from the Proprietors. The agitation of this controversy in 1695, shook to their centre the Provincial Courts, and fifty years later, was the subject of that famous bill in Chancery, of which I shall have occasion hereafter to speak, and in which is embodied so much of the early history of our State.

Thus far we have spoken only of the Courts of Justice in East Jersey. Those of West Jersey, under its Proprietary Government, will now claim our attention. They consisted, in the first place, of a Court for small causes, held by a single Justice of the Peace, having jurisdiction only in actions of debt under forty shillings, with a right of appeal to the County Court.¹ County Courts, or Courts of Sessions, as they were called, were first established by act of Assembly for Burlington and Salem in 1682,² and were extended in 1693 to the newly erected county of Cape May.³ They were to be held four times a year by the Justices of the Peace in each county. They seem to have had unlimited jurisdiction in all cases civil and criminal, with this single exception, that they could not try offences

¹ Grants and Concessions, p. 509.

² Ibid, p. 514.

³ Ibid, p. 448.

of a capital nature. They were the great Courts of the Province, and for a long time there was no appeal from their decisions. But in 1693,¹ a Supreme Court of Appeals was erected, consisting of one or more of the Justices of each county, and one or more of the Governor's Council for the time being, any three of whom, one being of the Council, were to constitute a quorum. This Court, as originally organized, was strictly an appellate tribunal, but in 1699, during the administration of Governor Hamilton, its title and constitution underwent an essential change.² It was to be called the Provincial Court, and to be composed of three Judges to be chosen by the House of Representatives of the Province, and one or more of the Justices of each county, of whom any three of the said Justices, in conjunction with two of the said Judges, were to be a quorum. It was to be held twice a year in each county, to have original as well as appellate jurisdiction, and when the matter in controversy amounted to twenty pounds, there was to be an appeal from its judgments to the General Assembly. By an act passed in 1700, it was made the duty of the Sheriff of each county, to meet the Provincial Judges and other officers, when riding the circuit, at the verge of his county, and to

¹ Grants and Concessions, p. 517.

² Ibid, p. 563.

attend and conduct them safely through his Bailiwick to the place of their sitting, or in case of further travel, to the entrance of the next county, the Sheriff of which was likewise to receive and conduct them in manner aforesaid.¹ In 1693, a Court of Oyer and Terminer was established for the trial of capital crimes, to be composed of a Judge appointed by the Governor and Council, assisted by two or more Justices of the county where the crime was committed.² And it is an interesting fact, that up to this period, there was really no tribunal in West Jersey competent to try offences of a capital nature.³ How strongly does this remind us of that feature in the code of the great lawgiver of Athens, by which no provision was made for the punishment of parricide, from an unwillingness to suppose that a crime so abhorrent to nature would ever be committed. So much for the Courts of Justice in West Jersey. I cannot find any traces of a

¹ *Grants and Concessions*, p. 572. This practice of meeting the Judges when riding the Circuit, at the verge of the county, and escorting them to the place where the Courts were held, continued to prevail until many years after the Revolution.

² *Ibid*, p. 520.

³ Properly speaking, there were no capital offences in West Jersey, that is, there were no crimes for which

the punishment of death was prescribed. But it was provided, that whenever a person should be found guilty of murder or treason, the sentence and way of execution were to be left to the General Assembly to determine as they in the wisdom of the Lord should judge meet and expedient.—*Grants and Concessions*, p. 404.

Court of Chancery in that Province under the Proprietary Government. In so primitive a state of society there could hardly have existed any necessity for such a tribunal, and it is not improbable, that the Quaker settlers in their simplicity may not have been aware of the distinction between Courts of law and of equity. Law was probably administered in all their Courts upon very equitable principles. Its rigor was mitigated, and its severe rules relaxed, without the assistance of a Court of Chancery.

Reference has been made to the Concessions of Berkley and Carteret. But the Concessions of the Proprietors of West Jersey were still more liberal. A more beautiful fabric of free government was never reared. It should be for ever embalmed in the memory of Jerseymen.

“No man nor number of men upon earth,” such is its language, “have power or authority to rule over men’s consciences in religious matters: therefore it is agreed and ordained, that no person or persons whatsoever within the said Province, shall at any time hereafter, in any way or upon any pretence whatsoever, be called in question, or in the least punished or hurt, either in person, privilege, or estate, for the sake of his opinion, judgment, faith, or worship, in matters of religion.” Never was

there a more comprehensive act of religious toleration; and never was it violated either in its letter or its spirit. That could be said of the Quakers of New Jersey, which could not be said of the Puritans of New England, "they had suffered persecution and had learned mercy."

No tax, custom, subsidy, assessment, or any other duty whatever, was, upon any color or pretence, how specious soever, to be imposed upon the inhabitants of the Province, without the consent and authority of the General Assembly. It would seem as if, with prophetic spirit, they had foreseen the very form in which tyranny would assail them. So dear to them was the right of trial by jury, that their language in relation to it, almost savors of refinement and borders upon excess. The Justices were to sit with the twelve men of the neighborhood, to assist them in matters of law, and to pronounce such judgment as they should receive from the twelve men, in whom alone, it was declared, the judgment resided; and in case of the neglect or refusal of the Justices to pronounce such judgment, then one of the twelve, by consent of the rest, was to pronounce their own judgment as the Justices should have done; language prompted, no doubt, by the bitter recollection of the way in which the rights of juries had

so often been trampled upon in England by overbearing Judges.¹ Members of Assembly were to be chosen by ballot; to receive instructions at

¹ Penn himself, whose name is affixed to these Concessions, and who probably had a principal hand in framing them, must have had a vivid remembrance of his own trial, which had taken place but a few years before. He and William Mead were tried at the Old Bailey in 1760, upon an indictment for a tumultuous assembly. We have a full account of this trial, written by themselves, in Hargrave's edition of the State Trials, and some of the incidents connected with it may perhaps account for the extreme solicitude shown in the Concessions to guard against invasion the rights of Juries. It may not be amiss, therefore, to advert to a few of them, although it may swell this note to an inconvenient size.

When the prisoners were brought to the Bar, one of the officers took their hats off. "Sirrah," exclaimed the Mayor, addressing the officer, "who bid you put off their hats? Put them on again." Their hats were accordingly put on again by the officer, and then the Recorder fined them forty marks apiece for contempt, in wearing their hats in the King's Court. When the Jury first returned into Court, they had not agreed upon their verdict; eight were for convicting and four for acquitting. The Court, after threatening and abusing them, sent them out again. They then returned with the following verdict: "Guilty of speaking in Grace-

church-street." Court—"Is that all?" Foreman—"That is all I have in commission." Recorder—"You had as good say nothing." After another volley of abuse, they were again sent out, and soon returned again, finding Penn guilty of speaking or preaching in Gracechurch-street, and Mead not guilty. Thereupon the rage of the Mayor and Recorder knew no bounds. "You are a Foreman indeed," said the Mayor, addressing him; "I thought you had understood your place better." "We will have a verdict," said the Recorder, "by the help of God, or you shall starve for it." "You are Englishmen," said Penn, looking upon the Jury; "mind your privilege, give not away your right." The Jury were kept out all night, without meat, drink, fire, or any other accommodation; but when brought into Court next day, they still adhered to their verdict. The Mayor, addressing Bushel, one of the Jury, said, "You are a factious fellow, I'll take a course with you." Bushel—"I have done according to my conscience." Mayor—"That conscience of yours would cut my throat." Bushel—"No, my Lord, it never shall." Mayor—"But I will cut yours as soon as I can." Penn—"I desire to ask the Recorder a question. Do you allow of the verdict given of William Mead?" Recorder—"It cannot be a verdict, because you are indicted for a conspiracy, and one

large from those who sent them; and to covenant and oblige themselves to be faithful to their constituents by indentures under their hand and seal. They were to receive for their services a shilling a day, that thereby they might be known to be the servants of the people. Courts were to be public and open, that all the inhabitants of the Province might freely come into them, that so justice might not be done in a corner.

These Concessions were declared to be their common law, their great charter; they were to be

being found guilty and not the other, it cannot be a verdict." Penn—"If not guilty be not a verdict, you make of the Jury and *magna charta* a mere nose of wax." The Recorder said it would never be well with them till they had something like the Spanish Inquisition in England. At last, after being kept out two nights and a day, the Jury returned with a verdict of not guilty. Recorder, addressing the Jury—"God keep my life out of your hands; but for this the Court fines you forty marks a man, and imprisonment till paid." Penn then demanded his liberty. Mayor—"No, you are in for your fines." Penn—"Fine, for what?" Mayor—"For contempt of Court." Penn was proceeding to remonstrate against this, when the Recorder said, "Take him away—take him away—take him out of the Court." Penn—"I can never urge the Fundamental Laws of England, but you cry, 'Take him away—

take him away.' But it is no wonder, since the Spanish Inquisition has so great a place in the Recorder's heart." The Jury, as well as the Prisoners, were then sent to Newgate for the non-payment of their fines. Bushel, however, one of the Jurors, sued out his writ of Habeas Corpus returnable to the Court of Common Pleas, and was discharged; Lord Chief Justice Vaughan, upon that occasion, delivering a most elaborate and masterly argument, in vindication of the right of a Jury to find a general verdict against the direction of the Court. "To Edward Bushel," said Lord Erskine, in his speech in defence of the Dean of St. Asaph, "are we almost as much indebted as to Mr. Hampden, who brought the case of ship-money before the Court of Exchequer."—*Erskine's Speeches*, II. 117. See *Bushel's Case*, *Vaughan's Rep.* p. 135-158.

read at the beginning and the dissolving of every General free Assembly; and they were also directed to be writ on fair tables, in every Hall of Justice in the Province, and read by the Magistrates in solemn manner four times every year in the presence of the people,—“it being intended and resolved, by the help of the Lord and these our Concessions, that every person inhabiting the said Province shall, as far as in us lies, be free from oppression and slavery.”¹ Precious words! And how should our hearts overflow with gratitude to God that now, one hundred and seventy years since this pious purpose was first announced, we live to see it realized. There is not to be found, in the whole history of our country, rich as it is in interesting scenes, an incident so beautiful, as the first settlement of West Jersey by the Quakers. “West New Jersey,” says Bancroft, “would have been a fit home for a Fenelon.”

Nor were the settlers of West Jersey satisfied with the mere declaration of their rights and privi-

¹ This was the first essay of Quaker legislation, and “entitles,” says Grahame, “its authors to no mean share in the honor of planting civil and religious liberty in America.”—“There,” said Penn and some of his colleagues, in allusion to these Concessions, “we lay a foundation for after ages to understand their liberty as men and Christians, that they may not be brought in bondage, but by their own consent; for we put the power in the people.”—*See Letter to Richard Hartshorne, Smith's N. J.*, p. 80.

leges. They were always ready to assert and vindicate them whenever they were questioned or assailed. Thus, when the agent of the Duke of York at the Hoarkills persisted in exacting customs of all vessels ascending the Delaware to New Jersey, the Quaker settlers remonstrated against it so earnestly, that the Duke, wearied by their importunity, referred the matter to Commissioners. To the Commissioners they then addressed themselves, and in support of their claim to exemption, delivered an argument, couched in the language of intelligent freemen, and breathing the very spirit of Anglo-Saxon liberty.¹

After reciting the grant of New Jersey from the King to the Duke of York, and from the Duke to Lord Berkley and Sir George Carteret, they proceed to say :

¹ This argument was prepared by William Penn, George Hutchinson, and several other coadjutors. Grahame says that "like most Quaker productions, it is extremely prolix;" but I do not think it is liable to this objection. I have given all the material parts of it, making here and there a slight verbal alteration; and I am much deceived with regard to its merit, if it may not, both as to matter and style, challenge a comparison with any cotemporary production.

Grahame further says: "That Penn

concurred in the presentation of the pleading is undeniable; and hence it may be fairly presumed that he assisted in its composition. But that he was the sole author of it, as some of his modern biographers have insinuated, is rendered extremely improbable by its style, in which not the slightest resemblance is discoverable to any of his acknowledged productions."—*Grahame's Col. Hist.*, I. p. 478, *note*. The document is preserved at length in Smith's History of New Jersey.

“Thus, then, we come to buy that moiety which belonged to Lord Berkley for a valuable consideration; and in the conveyance he made us, powers of government are expressly granted; for that only could have induced us to buy it; and the reason is plain; because to all prudent men the government of any place is more inviting than the soil. For what is good land without good laws? The better the worse. And if we could not assure people of an easy and free and safe government, both with respect to their spiritual and worldly property—that is, an uninterrupted liberty of conscience, and an inviolable possession of their civil rights and freedoms by a just and wise government—a mere wilderness would be no encouragement; for it were a madness to leave a free, good, and improved country, to plant in a wilderness; and there adventure many thousands of pounds to give an absolute title to another person to tax us at will and pleasure. This single consideration, we hope, will excuse our desire of the government; not asserted for the sake of power but safety; and that, not only for ourselves but for others, that the plantation might be encouraged.

“We dispose of part of our interest to several hundreds of people, honest and industrious, who transport themselves, and with them, such house-

hold stuff and tools as are requisite for planters to have. They land at Delaware Bay, the bounds of the country we bought; the passage God and nature made to it; at their arrival they are saluted with a demand of custom of five per cent, and that, not as the goods may be there worth, but according to the invoice as they cost before shipped in England.

“This is our grievance; and for this we made our application to have speedy redress; not as a burden only with respect to the *quantum*, or the way of levying it, or any circumstances made hard by the irregularity of the officers; but as a wrong. For we complain of a wrong done us; and ask, yet with modesty, *quo jure*? Tell us the title by what right or law are we thus used? That may a little mitigate our pain. Your answer hitherto has been that this was a conquered country, and that the king being the conqueror has power to make laws, raise money, &c.; that this power the king has vested in the duke, and by that right and sovereignty the duke demands the customs we complain of. But suppose the king were an absolute conqueror in the case depending, does his power extend equally over his own English people as over the conquered? Are not *they* some of the letters that make up the word conqueror? Did Alexander

conquer alone, or Cæsar beat by himself? No! Shall their armies of countrymen and natives lie at the same mercy as the vanquished, and be exposed to the same will and power with their captive enemies? The Norman duke, more a conqueror of England by his subjection to our laws and pretence to a title by them, than of heraldry by his arms, used not the companions of his victory so ill. Natural right and human prudence oppose such doctrine all the world over; for what is it but to say that people, free by law under their prince at home, are at his mercy in the plantations abroad? We could say more, but choose to let it drop.

“But our case is better yet. For the King’s grant to the Duke of York is plainly restrictive to the laws and government of England. Now the constitution and government of England, as we humbly conceive, are so far from countenancing any such authority, that it is made a fundamental in them, that the king of England cannot justly take his subjects’ goods without their consent. This needs no more to be proved than a principle; ’tis *jus indigine*, a home-born right, declared to be law by divers statutes. To give up this, is to change the government, to sell, or rather resign ourselves to the will of another, and that for nothing. For under favor, we buy nothing of the

duke, if not the right of undisturbed colonizing, and that as Englishmen, with no diminution, but rather expectation of some increase of those freedoms and privileges enjoyed in our own country : for the soil is none of his ; 'tis the natives' by the *jus gentium*, the law of nations ; and it would be an ill argument to convert to Christianity, to expel, instead of purchasing them, out of those countries. If then the country be theirs, it is not the duke's ; he cannot sell it : then what have we bought ? To conclude this point we humbly say, that we have not lost any part of our liberty by leaving our country : for we leave not our king nor our government by quitting our soil ; but we transplant to a place given by the same king, with express limitation to erect no polity contrary to the same established government, but as near as may be to it ; and that latitude bounded by these words, *for the good of the adventurer and planter* ; which that exaction of custom can never be.

“ Custom in all governments in the world is laid upon *trade*, but this upon *planting* is unprecedented. The plain English of the tragedy is this ; we twice buy this moiety of New Jersey ; first of Lord Berkley, and next of the natives ; and for what ? The better to mortgage ourselves and posterity to

the duke's governors, and give them a title to our persons and estates that never had any before.

“Besides, there is no end of this power; for since we are by this precedent assessed without any law, and thereby excluded our English right of common assent to taxes; what security have we of any thing we possess? We can call nothing our own, but are tenants at will, not only for the soil, but for all our personal estates. This is to transplant, not from good to better, but from good to bad. This sort of conduct has destroyed government, but never raised one to any true greatness.

“Lastly, the duke's circumstances, and the people's jealousies considered, we humbly submit, if there can be in their opinion, a greater evidence of a design to introduce an unlimited government, than both to exact such an uninterminated tax from English planters, and continue it after so many repeated complaints; and on the contrary, if there can be any thing so happy to the duke's present affairs, as the opportunity he has to free that country with his own hand, and to make us all owers of our liberty to his favor and justice. So will Englishmen *here* know what to hope for, by the justice and kindness he shows to Englishmen *there*; and all men see the just model of his government in New York, to be the scheme and draught in little of his

administration in Old England at large, if the crown should ever devolve on his head.

"The conclusion is this, that for all these reasons in law, equity, and prudence, you would please to second our request to the duke, that like himself, he would void this taxation, and put the country in such an English and free condition, that he may be as well loved and honored, as feared, by all the inhabitants of his territory ; that being great in their affections, he may be great by their industry ; which will yield him that wealth, that parent of power, that he may be as great a prince by property as by title."

This argument, "worthy," as Grahame says, "of the founders of a North American commonwealth," was attended, as it deserved to be, with triumphant success. The obnoxious custom was renounced, and West Jersey became a free and independent Province.¹

¹ The Commissioners referred the question to Sir William Jones, who gave it as his opinion, "that as the grant to Berkley and Carteret had reserved no profit or jurisdiction, the legality of the taxes could not be defended." The Duke of York promptly acquiesced in the decision, and by a new indenture relinquished all his claims on West Jersey ; and as the argument was equally applicable to East Jersey, a similar release was soon after executed in favor of the representatives of Sir George Carteret. "Thus," says Grahame, "the whole of New Jersey was promoted at once from the condition of a conquered country to the rank of a free and independent province, and rendered in political theory the adjunct, instead of the mere dependency, of the British empire. The powerful and spirited pleading by which this benefit was gained, derives additional interest

We have dwelt longer upon this first period of our history, than its importance may seem to demand; but there is a charm about it which it is difficult to resist. There is always more or less of romance connected with the infancy of every State. What the heroic ages were to Greece; what the period of its first kings was to France, and of its Anglo-Saxon monarchs to England; such to New Jersey, is the period which preceded the surrender of the government to the crown. It is the twilight of our history, and the very indistinctness with which objects are then revealed to us, but heightens their interest and leaves room for imagination; and time, while it deepens the shadows which rest upon them, but causes them to assume more varied and picturesque forms.²

We come now to the period of the *Surrender*.

from recollection of the conflict then subsisting in England between the advocates of liberty and the abettors of arbitrary power. It would not be easy to point out, in any of the political writings or harangues of which that period was abundantly prolific, a more manly and intrepid exertion for the preservation of liberty, than we behold in this first successful defence of the rights of New Jersey. One of the most remarkable features of the plea which the colonists maintained, was the unqualified and deliberate assertion, that no tax could be

justly imposed on them without their own consent and the authority of their own provincial assembly. The report of the commissioners and the relief that followed, were virtual concessions in favor of this principle, which in an after age was destined to obtain a more signal triumph in the national independence of North America."—*Grahame's Col. Hist.*, 479.

² For some notice of the principal laws that were enacted, both in East and West Jersey, under the Proprietary Government, see Appendix A.

The claim of the Proprietors to exercise the powers of Government had been for some years questioned; a *Quo Warranto* was actually depending in the Court of King's Bench, the object of which was to test its validity; and the increasing number,¹ and conflicting views of the Proprietors, rendered the possession of such powers of doubtful utility.² Under these circumstances, an absolute and unconditional surrender of them was made to the crown;³ and Lord Cornbury, the grandson of the illustrious Clarendon, and the cousin of Queen Anne, was appointed the first Royal Governor of the united Provinces of East and West Jersey. Although, by his *Instructions*, he was forbidden to

¹ The shares and parts of shares had been so divided and subdivided, that some of the proprietors owned but one fortieth part of a forty-eighth part of a twenty-fourth share.—*Pitkins' U. States*, I. 64.

² Pitkins says that while the New England colonists clung to their charters as to the ark of their political safety, in opposition to the claims of the king and parliament, those under the proprietary governments, and especially in Pennsylvania, New Jersey, and Carolina, *sought refuge and protection from the oppression of the proprietors*, under a royal government. However true this may have been in reference to Pennsylvania and Carolina, in the case of New Jersey, it

must be remembered, that it was these very proprietors themselves by whom the surrender was made.—*Pitkins' U. States*, I. 60.

³ *Grants and Concessions*, p. 609. Although the surrender was in its terms absolute and unqualified, yet by the Instructions to Lord Cornbury—which were shown to the proprietors and acquiesced in by them before the surrender was made—it was provided, that the right and property of the proprietors to the soil of the Province should be confirmed to them, together with all such privileges as were expressed in the conveyances made by the Duke of York, excepting only the right of government.—*Grants and Concessions*, p. 628.

erect any Court or office of judicature not before erected or established; without a special order, yet by his *Commission*, full power and authority were given to him, with the advice and consent of his Council, to erect, constitute, and establish such Courts of Judicature in the Province, as should be thought fit and necessary for the hearing and determining of all causes, as well criminal as civil, according to law and equity.¹ Similar authority was given to all succeeding Governors. Thus, the important power of establishing Courts for the administration of justice, which before the Surrender had been so jealously reserved both in East and West Jersey to the General Assembly, was now conferred, without limitation or control, upon the Governor and Council. But, as draughts of the Commission as well as of the Instructions, were submitted to the Proprietors before the Surrender

¹ The Commission and Instructions to Lord Cornbury, as Mr. Griffith observes (*Law Reg. iv. 1178*, note), ought to be prefixed to our Laws, as showing in what manner the government was organized and administered, and how our Courts were constituted prior to 1776. They were in fact the Constitution of the Colony of New Jersey, and are well worthy of being preserved. They were evidently the result of much consideration, and are drawn

with signal ability. I have supposed therefore that I might be conferring a favor upon my professional readers by inserting them at large in an appendix. It is true they are to be found in Smith's History of New Jersey, and Leaming and Spicer's Laws, usually called Grants and Concessions; but both of these works are becoming very scarce, and are to be found only in a few libraries.—See *Appendix B*.

was consummated, they had no right to complain. And it is but fair to say that, whatever abuses of authority may have been committed by the Royal Governors in reference to other matters, this power seems, in every instance, to have been exerted with great judgment and discretion.

It is then to the *Ordinances* of the Governor and Council that we are to look, for the frame and constitution of our Courts after the Surrender. The first Ordinance for the establishment of Courts of Judicature in the Province of New Jersey, was that of Lord Cornbury in 1704.¹ It is really gratifying to be able to find a single redeeming feature in the administration of this weak, corrupt, and tyrannical man, who disgraced the sovereign whose representative he was, and dishonored the noble ancestry from which he was sprung. But he is entitled to the credit of having laid the foundation of our whole judicial system; and of having laid it well. True, the materials for such a work were found in the several Courts which existed under the Proprietary Government, and of which we have already spoken: but he reduced them to order, and gave them shape, and beauty, and proportion. All that has been done from that day to this, has been but to

¹ Appendix C.

fill up, as it were, the outline which he sketched ; to add some additional apartments to the judicial edifice which he constructed.

He gave to Justices of the Peace cognizance in all cases of debt and trespass to the value of forty shillings, with the right of appeal to the Court of Sessions where the sum in controversy was over twenty shillings.

He ordained that there should be a Court of Common Pleas kept and holden in every County of the Province, at the place where the General Courts of Sessions were held, and to begin immediately after the Sessions had ended, with power to hear and determine all actions, triable at Common Law, of what nature or kind soever ; subject to a removal to the Supreme Court, either before or after judgment, where the matter in dispute exceeded ten pounds, or the title to land came in question.

The General Sessions of the Peace were directed to be held four times a year in every County, at the times and places mentioned in the Ordinance. For the County of Middlesex they were to be held at Amboy ; for Bergen at Bergen ; for Essex at Newark ; for Monmouth at Shrewsbury ; for Burlington at Burlington ; for Gloucester at Gloucester ; for Salem at Salem ; and for Cape May, at

the House of Shamger Hand.¹ In Essex and Salem alone have the seats of justice remained unchanged, nor there, without some fierce struggles for a removal, the memory of which remains to this day.

At Perth Amboy and Burlington, alternately, was to be held a Supreme Court of Judicature, which was fully empowered to have cognizance of all pleas, civil, criminal, and mixed, as amply, to all intents and purposes, as the Courts of Queen's Bench, Common Pleas, and Exchequer, in the kingdom of England have, or ought to have. And if the question were now asked, what is the jurisdiction of the Supreme Court of the State of New Jersey as at present constituted, the only answer that could be given would be in the language of Lord Cornbury's Ordinance: they have all the jurisdiction which the Courts of Queen's Bench, Common Pleas, and Exchequer in England have, or ought to have. So little addicted to change have we shown ourselves in reference to our Courts! So truly conservative in its character has been the history of our State! Into this Court might be removed from the Courts of Common Pleas and Ses-

¹ Nothing is here said as to the place where the Courts for the County of Somerset were to be held. They were probably held at the same place with the Courts for the County of

Middlesex; for by the Ordinance of Governor Hunter in 1714, Courts for both Middlesex and Somerset, were directed to be held at Perth Amboy.

sions of the Peace, any plea, action, information, or indictment, therein depending, or upon which judgment had been rendered.

There were to be two Terms of the Supreme Court every year, each Session not to exceed five days; and once every year, if need should so require, a Circuit was to be held by one of the Justices of the Court in every County. The Judges of the several Courts were authorized to make rules of practice for regulating their proceedings; and finally, it was ordained, that all issues of fact should be tried by twelve men of the neighborhood, "as it ought to be done by law."¹

Such was the constitution of our Common Law Courts nearly a century and a half ago, and such in all its leading features it remains to this day.² I

¹ It will be seen that no provision is made in this Ordinance for a Court of Appeals in the last resort. The constitution of this Court was not left to the Governor and Council, as was that of the other Courts, but it was erected by the Queen in Council, and made part of the Instructions to Lord Cornbury. It was there provided that Appeals might be made in Cases of Error from the other Courts to the Governor and Council; but if any of the members of Council were Judges of the Court from which the Appeal was taken, they were not to vote upon the Appeal, but might be present

at the hearing thereof and give the reasons for their judgment. And a further Appeal was to be allowed from the Governor and Council, where the sum in controversy exceeded two hundred pounds sterling, to the Queen in Privy Council.

² These Courts continued without any essential change to the Revolution. The Constitution of 1776 merely directed how the Judges were to be appointed, thereby tacitly adopting them, with all the judicial power they had at the time. And shortly after the adoption of the Constitution, the Legislature enacted, "that the sever-

have dwelt the longer upon this Ordinance, because it seems to have escaped entirely the notice, not only of the Historians of New Jersey, but of those who have professedly written upon the subject of our Courts of Justice. Even William Griffith, the learned compiler of the Law Register, whose researches into the origin and progress of our Judiciary System are so well known to my professional hearers, was evidently not aware of the existence of such an Ordinance. After reciting the laws that were passed during the Proprietary Government of East Jersey in reference to the Court of Common Right, he goes on to say, that it was under these laws *alone*, that the Supreme Court acted from the Surrender in 1702 to the 29th of April, 1723;¹ losing sight, not only of the Ordinance of Lord Cornbury, but also of a similar Ordinance of Governor Hunter in 1714.² The truth is, that these Ordinances are not to be found in the

al Courts of Law and Equity of this State shall be confirmed and established, and continue to be held with the like powers under the present government, as they were held at and before the Declaration of Independence."—*Pat. Laws*, p. 38.

Nor did the Constitution of 1844 make any alteration in the character of our Courts, save only that the Governor was no longer to be Chancel-

lor, and that the Court of Errors and Appeals in the last resort, instead of consisting of the Governor and Council, was to be composed of the Chancellor, the Justices of the Supreme Court, and six Judges to be appointed for that purpose.

¹ Griffith's Law Reg., IV. 1175, Note 1.

² Appendix D.

Book of Commissions in the office of the Secretary of State, from which source Mr. Griffith seems to have derived all his knowledge of the constitution of our Colonial Courts. So too, in tracing the history of the Court of Common Pleas, Mr. Griffith states that the Assembly soon after the Surrender passed a law establishing Courts, which was disallowed by the king; and that "on the 29th of April, 1723, George the Second, by the advice of the Lords of the Privy Council at the Court of St. James, established an Ordinance, which may be considered as the foundation of the jurisdiction of the Courts of New Jersey in civil and criminal cases, at common law."¹

This statement is singularly inaccurate. No such act was ever passed by the Colonial Assembly.² If there had been, it would unquestionably have been promptly vetoed by the Governor. It would never have found its way to the King in Council. The Royal Governors were not slow in asserting their prerogatives; and they alone, with the advice of their Council, had the power of erecting Courts. And then, the Ordinance of George

¹ Griffith's Law Reg. IV. 1169, which was disallowed by the king in Council, and is referred to in the Ordinance of April 29th, 1723; and it must have been to this act that Mr. Griffith had reference.

² There was an act passed entitled, "An Act for shortening lawsuits and regulating the practice of the law,"

the Second, so far from being the foundation of the jurisdiction of our Courts, was, with a few slight alterations, but a copy of the original Ordinance of Lord Cornbury.

It is this Ordinance of April 29th, 1723, which is inserted in the Appendix to one of the volumes of the Reports of our Supreme Court, as showing the original extent of the jurisdiction of our Courts, and which, the Reporter observes, remained, so far as he had been able to discover, unrepealed.¹ Whereas, the fact is, that this Ordinance continued in force but a single year. It was found to be inconvenient in some respects,² and was superseded by another Ordinance of the King in Council, which bears date on the 23d of April, 1724;³ and this in turn was supplied by still another Ordinance of the 21st of August, 1725.⁴ And then, in less than three years afterwards, we have the Ordinance of February 10th, 1728,⁵ by which two Supreme Courts were established in the Province, one for the Western division, to be held four times a year at Burling-

¹ 1 Halstead's Rep. Appendix, p. 1. This Ordinance is recorded in Book C of Commissions, No. 2, pages 57—60.

² It was not only found inconvenient as to the times of the sitting of the Courts, but it contained no authority for the appointment of Commis-

sioners to take bail in the several counties; and, what was more important still, it made no provision for Circuit Courts to try issues of fact joined in the Supreme Court.

³ Appendix E.

⁴ Appendix F.

⁵ Appendix G.

ton, and the other for the Eastern division to be held four times a year at Perth Amboy.¹ With such rapidity did these Ordinances follow each other. They are all, however, based in a great measure upon the original Ordinance of Lord Cornbury, and the only points in which several of them differ from each other, are as to the times of holding the respective Courts. These Ordinances were published in pamphlets at the time of their adoption, but very few copies of them are now in existence; and most of them have never been transcribed in the Books of Commissions in the Secretary's office.²

In reference to the original Ordinance of Lord Cornbury, I will add, that I was led from a variety of circumstances to infer the existence of such a document, and yet I could meet with no one who had ever seen or heard of it. After a long and fruitless search for it in the office of the Secretary of State, and among the records of the Supreme Court, I had abandoned all hope of finding it, when

¹ The object of this arrangement probably was to prevent causes, which originated in one division of the province, from being tried in the other. Both Courts were held by the same Judges. This Ordinance however did not remain in force many years. It appears by the Minutes of the Supreme Court that on the 18th of May, 1734, a new Ordinance was produced

and read, but what its provisions were are not stated, nor have I been able to find the Ordinance itself.

² It is for this reason that I have deemed it advisable to insert in the Appendix such of these Ordinances as I have been able to lay my hands upon, and which are not to be found in the Books of Commissions.

I happened accidentally to light upon it, bound up in an old volume of Acts of Assembly in the State Library, where it had no doubt slept undisturbed for many a year. The name of Cornbury, in very large capitals, is subscribed to it, and it purports to have been printed "by William Bradford, Printer to the Queen's Most Excellent Majesty in the City of New York, 1704." By whom this Ordinance was framed, it is of course at this late day impossible to ascertain. That it was by one familiar with the Common Law, and conversant with the Courts of Westminster Hall, may fairly be inferred; and, as we shall presently see, such a man Lord Cornbury had in his Council; a man, who probably did more than all others, to mould the judicial systems both of New Jersey and New York.¹

And now it would, I doubt not, relieve the tediousness of these dry and uninteresting details, and illustrate somewhat the history of the times, could I introduce you for a few moments into the Courts thus established, and enable you to witness the passing scenes. Fortunately, the materials for such a purpose exist in the greatest abundance. The early minutes of our Supreme Court are copious even to a fault, and open a mine of curious and

¹ Roger Mompesson, Chief Justice of the Supreme Court of New Jersey and also of New York.

valuable information, which has never yet been explored.¹ Time, however, will not allow us to do more than to glance at them; and, in doing so, we shall find Lord Cornbury figuring in his true character, and laboring to make the tribunals which he had erected the mere instruments of his vengeance.

The first session of the Supreme Court was held at Burlington on the seventh day of November, 1704. The Commissions of Roger Mompésson as Chief Justice of the Supreme Court of Judicature of the Province of New Jersey, and of William Pinhorne as second Judge, were read, and they took their seats upon the bench. The Court then adjourned to eight o'clock of the following day, a somewhat earlier hour, it may be remarked, than that at which Courts of Justice at the present day are in the habit of convening. A Grand Jury was returned by the Sheriff of the County of Burlington, and a charge delivered to them by the Chief Justice. No indictments, however, were found, and no civil causes were ready for trial, and after the admission of a number of Attornies, the Court adjourned to

¹ These minutes contain full reports of some of the early trials had in the Supreme Court, including the testimony of the witnesses who were examined. Not only were civil suits

tried at bar in the Supreme Court, but Grand Juries were returned by the Sheriff of the County in which the Court sat, and the Indictments tried there.

the first Tuesday of May, at Burlington.¹ At the next term of the Court Alexander Griffith appeared with his commission as her Majesty's Attorney General for the Province of New Jersey, and a number of Indictments were sent up to the Grand Jury. The Bills were first drawn, and the witnesses who were to be examined by the Grand Jury were sworn in open Court, according to the English practice, which prevailed in New Jersey until after the Revolution.² And what, think you, was the nature of these Indictments? They were all Indictments for uttering seditious words of, and concerning, Lord Cornbury; for already had his conduct begun to provoke the contempt and indignation of the people.

¹ It ought to have adjourned to Amboy instead of Burlington, for by the Ordinance it was to be held at these two places alternately. We find, however, a good many irregularities in the early proceedings of our Courts, which cannot now be accounted for. Thus we find Justices of the Peace sitting upon the Bench of the Supreme Court. They formed part of the Provincial Court of West Jersey before the Surrender, but under the new order of things, they would seem to have been out of their place there. And yet their names are regularly entered on the minutes along with the Judges of the Supreme Court. And the first Indictment for

murder ever found in the county of Gloucester, appears to have been tried before Lord Cornbury in person. He had a very exalted notion of his prerogative; and as the king in England is always supposed to be present in his Court of King's Bench, and formerly, as it is thought, sat there in person, so Lord Cornbury, as his representative, may have considered himself entitled to a similar privilege.

² The practice now is for the witnesses to be sworn in the Grand Jury room, the Foreman being authorized to administer the oath to them; and Indictments are not usually drawn until the Grand Jury have resolved to find a bill.

The first Indictment was against John Hollingshead, and the words, for the speaking of which he was thus solemnly arraigned, were these. He was charged with saying, "That the Governor had dissolved the Assembly, but that they could get another just as good, and if the Governor liked them not, he might go from whence he came." The next Indictment was against Walter Pomphrey. At an election for members of the Assembly held in Burlington, he was charged with having said to one of the voters, "I will give you a pot of beer to vote for the old Assemblymen, because they would give Lord Cornbury no more than thirty-five hundred pounds, which his Lordship made a huff at." Then there were two Indictments against Jedidiah Allen; one for saying, "that the Assembly could have done their business well enough, but that the Governor dissolved it, which he was satisfied was because they would not give him money enough;" and the other for saying, "that Colonel Morris was dismissed from being of the Council by my Lord, but that it was more than my Lord had power to do."

Such was Lord Cornbury's notion of sedition. That the words spoken were true, was probably deemed an aggravation of the offence. He no doubt adopted in its fullest extent the maxim, "the

greater the truth the greater the libel." I hope it is unnecessary to say that the Grand Jury returned each of the Bills with an *ignoramus*. In other words, they refused to find them. Here, it may be supposed, this ridiculous and disgraceful matter ended. But Lord Cornbury was not thus to be put off. He was flushed with the victory which he had just achieved at a recent election, the only one during his whole administration which resulted in the choice of a majority of members to his mind.¹ And the new Assembly had complimented him by an address, in which they say, that he had gone through the affairs of government "with great diligence and exquisite management, to the admiration of his friends and the envy of his enemies." He was resolved to vindicate still further the justice of this compliment. When therefore these Indictments were thrown out by the Grand Jury, the Attorney General was instructed to apply to the Court for leave to file Informations. Leave was accordingly granted, and informations were immediately drawn up against all the Defendants, almost in the very words of the Indictments. The Defendants being charged, pleaded not guilty. Hollingshead moved to postpone his trial until the following

¹ Smith's N. J., p. 283.

term; and the motion was allowed, but upon this condition, that he should put in an issuable plea, thereby admitting the sufficiency of the Information. An order was accordingly made, that he should enter into a recognizance to appear at the next term, to put in an issuable plea, and to keep the peace and be of good behavior in the meantime. This Hollingshead positively refused to do, and then the Court, instead of ordering on the trial of the cause, committed him for contempt, as it was termed, and, it is added, for abusing the witnesses for her majesty. How or where he had abused the Queen's witnesses, does not appear.

Pomphrey, not caring, I suppose, to have his case postponed upon the same terms, consented to go to trial. A Jury was at once empaneled and the trial proceeded. A number of witnesses were examined to prove the speaking of the words, and their testimony is spread upon the minutes of the Court. The Defendant had no counsel, and offered no evidence; and after a charge from the Chief Justice, the Jury rendered a verdict of guilty. But although the Court—to their shame be it spoken—had thus far humored his Lordship, they did not dare to pronounce judgment. The Defendant was recognized to appear from term to term, and at last forfeited his recognizance; with an understanding,

probably, that no further proceedings would be had against him.

At the next term of the Court, held in Burlington, Hollingshead was tried upon his information, and acquitted; but the Court refused to discharge him, until he had paid all the costs of the prosecution. What became of the information against Jedidiah Allen, does not appear. In May Term, 1707, Thomas Killingworth was tried upon two several Informations exhibited against him for speaking contemptuously of the Church of England—of which you know Lord Cornbury was a most zealous defender—but the Jury found him not guilty. And I ought to say, in justice to the Juries of those days, that although numberless Informations for similar offences were tried in the Supreme Court during the administration of Lord Cornbury, I can find no other instance in which a verdict of guilty was ever rendered.

Comment upon these proceedings is unnecessary. The bare recital of them proclaims more strongly than any language can do, the tame subserviency of the Court and the contemptible character of Cornbury. But I must close at once this old book of minutes, or I shall exhaust your patience long before I have finished my task.

Roger Mompesson was the first Chief Justice of

the Province of New Jersey. Miss Anne Seward, in one of her letters, after describing a steep romantic dell in the high peak of Derbyshire, on the brow of which stood the large and populous village of Eyam, states, that it was in this rocky gallery that Mr. Mompesson, the rival in virtue of the good Bishop of Marseilles, preached to his parishioners of the village, when it was visited by the plague in 1666, rationally concluding that assembling in a close church would be likely to increase the infection.¹ From this pious and courageous Rector of Eyam,² Roger Mompesson is supposed to have de-

¹ Seward's Letters, vol. i. Miss Seward to Miss Weston, Sept. 6, 1783.

² William Mompesson was Rector of Eyam in Derbyshire, during the time of the plague in London. He never caught the disorder; and was enabled during the whole period of the calamity, to perform the functions of the physician and the priest of his afflicted parish. During these pious labors, his wife was taken ill and died. There are some touching passages in a letter written by him upon this occasion to Sir George Saville, the patron of the living of Eyam. "This is the saddest news that ever my pen could write! The destroying angel having taken up his quarters within my habitation, my dearest wife is gone to her eternal rest, and is invested with a crown of righteousness, having made a happy end."

"Indeed, had she loved herself as well as me, she had fled from the pit of destruction with her sweet babes, and might have prolonged her days; but she was resolved to die a martyr to my interest. My drooping spirits are much refreshed with her joys, which I think are unutterable."

"Dear sir, let your dying chaplain recommend this truth to you and your family, that no happiness nor solid comfort can be found in this vale of tears, like living a pious life; and pray ever retain this rule: 'never do any thing upon which you dare not ask the blessing of God.'"

"With tears I beg, that when you are praying for fatherless infants, you would remember my two pretty babes."—*Kingston's Am. Biog. Dic.*, p. 209.

scended. His family was an ancient and respectable one, and he had attained to considerable eminence in England, before he came to this country. He was not only an eminent lawyer, but he had been the Recorder of Southampton, and a member of two several Parliaments. He arrived in Philadelphia in the summer of 1703, and was the bearer of a letter from William Penn to James Logan, for a copy of which, in the possession of the American Philosophical Society, I am indebted to the kindness of Edward Armstrong, Esq., the Recording Secretary of the Pennsylvania Historical Society.

"The gentleman," writes Penn, "who brings this, is constituted Judge of the Admiralty of Pennsylvania, the Jerseys, and New York, and is yet willing to be my Attorney General to rectify matters in law, and to put you into better methods, in which respect, he is by the judicious here thought to be very able. If you were together, it were for thy advantage in many respects. He is a moderate Churchman, knows the world here, has been in two several Parliaments, and Recorder of Southampton. Only steps abroad to ease his fortune of some of his father's debts he was unwarily engaged for. He is a favorite of Lord Cornbury's father, the Earl of Clarendon. I have granted him a commission for Chief Justice, in case the people will lay hold of

such an opportunity as no Government in America ever had of an English lawyer, and encourage him by a proper salary."

Logan in reply announces the arrival of "Counsellor Mompesson;" and in another letter to Penn some months afterwards, thus speaks of him: "He is ingenious, able, honest, and might be a great blessing to us could we enjoy it." He also suggests that if he could be made Chief Justice by the Queen for Jersey, as well as Pennsylvania, it would be a great encouragement to him, and that he could serve more Provinces than both these in that station.¹

The people of Pennsylvania, however, seemed very insensible to the blessing thus tendered them, and were slow in laying hold of this opportunity of having an English lawyer for their Chief Justice.

¹ Mompesson's arrival had been heralded by a letter from Penn to Logan, in which he says, "I hope you will have one out shortly, that will be a safer guide and surer footing than ever yet was with you; an able-grounded lawyer, and a good-tempered, honest, sober gentleman."

Again he writes under date of April 3d, 1703: "If Counsellor Mompesson cannot have a salary from the people as Chief Justice of the Province, for which he is well fitted, then if he were Secretary of the government, (if that post is a clog to thee,) or, in case of my cousin Markham's

decease or refusal, if he were Register General, I should like it for his deserved encouragement."

Samuel Preston writes to a friend in England under date of August 13 1703: "To the no small surprise of Col. Quarry, arrived here as soon or before report, one Roger Mompesson, Judge for the Admiralty, famed as a man of great abilities, free, it is said, from prejudices of party, of integrity, friendly to Gov. Penn, and, as it is thought, like to be a happiness to this place."

He was not sworn into office until April, 1706, and there is no evidence that he ever took his seat on the Bench.¹ The administration of justice was at this time, and for many years afterwards, in a very unsettled state in Pennsylvania, and the people, as Logan says in one of his letters to Penn, had become "so superlatively honest," that there was little business for the Courts to do; so that the Chief Justice had not much hope of mending his fortune in that Province. In the mean time Lord Cornbury, the son of his friend and patron, had been appointed Governor of New Jersey and New York, and at once made him the Chief Justice of both those Provinces; which office he continued

¹ The following are extracts from the minutes of the Provincial Council of Pennsylvania, published by order of the Legislature, in 1838.

At a Council held at Philadelphia the 17th of April, 1706. "The Governor acquainted the Board that the Proprietor had, by Judge Mompesson, sent over his warrant directed to Col. Hamilton, to pass a commission under the great seal, constituting the said gentleman Chief Justice of this Government; but that Col. Hamilton being deceased before his arrival, it could not then be done, and it has been to this time deferred; but that at length the said Judge has been pleased to accept of it, though the present encouragement be but very slender and no way inviting, yet it may

be reasonably hoped, since the country has now made some provision for the support of government, they will not fail likewise to provide for the administration of justice in the Courts, and especially take care to lay hold on so good an opportunity offered them."

The Governor then ordered a Commission, appointing the said R. Mompesson Chief Justice, to be read, which being done, the Chief Justice took the usual oaths.—2 *Pro. Min.*, p. 287.

No provision, however, seems to have been made for the administration of justice; and Mompesson was obliged to be content with acting as the Chief Justice of New York and New Jersey.

to fill during the whole of Cornbury's administration. He became his principal adviser in all matters of law, and was no doubt the author of that Ordinance to which reference has already been made. All cotemporary authorities agree in representing him to have been a man of much ability, and great learning in his profession. And when we remember that he was an English lawyer, and presided for so many years over the Courts of New York and New Jersey, we shall have less difficulty in accounting for the fact, of the close resemblance, which has until recently existed in the judicial systems of these States, and their general conformity to the practice of the Courts of Westminster Hall.

Of the private life and character of the Chief Justice, unfortunately, little can now be known; but in the political transactions of the times, he played a somewhat conspicuous, and not a very creditable part. He was not named as one of the Council in the Instructions of Lord Cornbury, but he soon became a member of the Board, probably in the place of Lewis Morris, who had been expelled by the Governor for his refractory conduct. And certainly, a more pliant and submissive councillor than Mompesson, Lord Cornbury could not have desired.

All who are at all familiar with the history of

New Jersey, will readily call to mind the sharp passages of words which took place between the Assembly and the Governor in 1707. A series of the most wanton and flagrant acts of tyranny and rapacity had so exhausted the patience of the House, that, instead of paying the least regard to his constant demands for money, they resolved themselves into a committee of the whole to consider of their grievances. After resolving to petition the Queen for his removal, they drew up a long remonstrance to be presented to Lord Cornbury in person, laden with their complaints. This memorable production was from the pen of Lewis Morris, who after his expulsion from the Council, had been returned as a member of Assembly; and it was certainly couched in no very courtly style, nor expressed in very measured terms. Various were the counts in this indictment. The Governor—for by this title only did they now address him—was charged with long and unnecessary absence from the Province; with refusing to pass sentence of death upon two criminals—one of whom had been convicted of murdering her child, and the other of poisoning her husband—the blood of whose innocent victims, it was said, cried aloud for vengeance, which just heaven would not fail to pour down upon their devoted country if such crimes went unpunished;

with compelling persons unjustly accused to pay costs, although no bills were found against them by the Grand Jury; with unauthorized and arbitrary interference with the rights of the Proprietors; and, to crown the whole, with having received large sums of money raised for the purpose of procuring by bribery and corruption a dissolution of the Assembly. Liberty, they said, was too valuable a thing to be easily parted with, and when such violent endeavors were used to tear it from them, they had neither heads, hearts, nor souls, that would not be moved with the miseries of their country, and would not be forward with their utmost power lawfully to redress them. And they concluded by advising the Governor to consider what it was that principally engaged the affections of a people, and that he would find no other artifices needful, than to let them be unmolested in the enjoyment of what of right belonged to them; that a wise man who valued his own happiness, would earnestly labor to regain their love.¹

Samuel Jenings² was the Speaker of the As-

¹ Smith's N. J., pp. 288—294.

² Samuel Jenings is described by Smith as a man of great candor, probity, and ability; of a warm and hasty temper, but with a heart alive to every generous emotion; a friend to

the widow, the fatherless, and the unhappy; an ardent lover of right and liberty, and abhorring oppression in every shape; and although sometimes thought stiff and impracticable in his opinions, yet of acknowledged

sembly, and upon him it devolved to present to the Governor this bold and spirited address; and certainly it lost nothing of pungency or point in the manner of its delivery. Not at all daunted by the assumed air of loftiness and disdain which the Governor put on in order to intimidate him, he read it in a clear, firm, and deliberate tone, and when interrupted, as he frequently was, by the cry of *stop! what's that?* whenever he came to the more offensive parts, instead of being disconcerted, with an appearance of great humility he calmly desired leave to read the passages over again, which he did, says Smith, "with an additional emphasis upon those the most complaining, so that on the second reading they became more observable than before."¹

When the Assembly had withdrawn, Cornbury

integrity and fortitude in all stations. He had lived for some years in Pennsylvania and borne several important offices in that province. He had also been Governor of West Jersey under the Proprietary Government.—*Smith's N. J.*, 359.

His character is thus sketched by one of the first settlers of New Jersey. "Samuel Jenings and his wife Ann, were early comers to America, and of worthy memory, endued with both spiritual and temporal wisdom;—some part of his time he was made

Governor of West Jersey;—he was a suppressor of vice and an encourager of virtue;—*sharp towards evil doers, but tender and loving to them that did well*; giving good counsel and wholesome advice to friends and neighbors;—an able minister of the Gospel, and labored much therein, to the comfort and edification of many people, both in this province and other places."—*Proud's Pennsylvania*, I. 158. Note.

¹ Smith's N. J., 295.

said to those about him, "that fellow Jenings has impudence enough to face the devil." After the lapse of some days, the Governor sent for the House, and delivered his answer. It was written and delivered in a tone of insolent defiance, and contained a good deal of that low humor for which he was noted.

In reference to the first charge, he says: "The affairs of New York have never hindered the Governor from attending those of New Jersey whenever it has been requisite; and I can safely say, I don't know of any grievances this Province labors under, except it be the having a certain number of people in it who never will be faithful to, nor live quietly under any government, nor suffer their neighbors to enjoy any peace, quiet, or happiness, if they can help it."

As to the second charge he thus proceeds: "As to what you say with relation to the apprehensions you have, that just heaven will not fail to pour down vengeance upon your already miserable country, if these criminals are not made to suffer according to their demerits; I am of opinion, that nothing has hindered the vengeance of just heaven from falling upon this province long ago, but the infinite mercy, goodness, long-suffering, and forbearance of Almighty God, who has been abun-

dantly provoked by the repeated crying sins of a perverse generation among us, and more especially by the dangerous and abominable doctrines, and the wicked lives and practices of a number of people," (meaning the Quakers,) "some of whom, under the pretended name of Christians, have dared to deny the very essence and being of the Saviour of the world."

With regard to persons paying fees, against whom no bills had been found by the Grand Jury, he intimates, that if juries were in this country what they ought to be, there might possibly be some ground of complaint; "but," he adds, "we find by woful experience, that there are many men who have been admitted to serve upon grand and petty juries, who have convinced the world, that they have no regard for the oaths they take, especially among a sort of people, who, under a pretence of conscience, refuse to take an oath; and yet many of them, under the cloak of a very solemn affirmation, dare to commit the greatest enormities, especially if it be to serve a friend, as they call him." Jenings, you know, was a Quaker.

Another complaint was, that there was but one office for the probate of wills, which was at Burlington, and that it was very expensive and inconvenient for persons living in remote parts of the Pro-

vince to attend it. After pronouncing this complaint to be malicious, scandalous, and frivolous, contrived only to amuse poor ignorant people with notions of grievances, he says : " But of all people in the world, the Quakers ought to be the last to complain of the hardships of travelling a few miles upon such an occasion, who never repine at the trouble and charges of travelling several hundred miles to a yearly meeting, where it is evidently known, that nothing was ever done for the good of the country, but on the contrary, continual contrivances are carried on for the undermining of the Government both in Church and State."

" These, Governor, are some of the grievances," was one of the expressions in the remonstrance. This, he says, is certainly one of the boldest assertions that ever was made, especially when there appears no manner of proof to make it out : " And although I know very well, that there are several unquiet spirits in the Province, who will never be content to live quiet under any government but their own, and not long under that neither, as appears by their methods of proceeding when the Government was in the hands of the Proprietors, when many of these very men who are now the remonstrancers, were in authority, and used the most arbitrary and illegal methods of proceeding over

their fellow-subjects that were ever heard of; yet I am satisfied there are very few men in the province, except Samuel Jenings and Lewis Morris—men known neither to have good principles, nor good morals—who have ventured to accuse a Governor of such crimes, without any proof to make out their accusation; but they are capable of any thing but good.”

“I was going to conclude,” he says, “with giving you some wholesome advice; but I consider that will be but labor lost, and therefore shall reserve it for persons who I hope will make a right use of it.”

A replication to this answer was of course prepared by the Assembly, and a committee appointed to present it to the Governor; but he refused to receive it, and the House thereupon ordered that it should be entered on their journal. It was dignified and dispassionate, but entirely too long to be here inserted. There was one passage in it, however, too characteristic to be omitted. In reference to his repeated attacks upon the Quakers, they remind him, that it was the General Assembly of the Province of New Jersey that complained, and not the Quakers, with whose persons and meetings they had nothing to do; but, it is added, “those of them who are members of this House,

have begged leave, in behalf of themselves and their friends, to tell the Governor, they must answer him in the words of Nehemiah to Sanballat, contained in the eighth verse of the sixth chapter of Nehemiah, viz.: "*There are no such things done as thou sayest, but thou feignest them out of thine own heart.*"¹

The Governor, alarmed at the effect which these complaints and remonstrances might have at home, prevailed upon the Lieutenant Governor Ingoldsby, and some of the Council, to unite in an address to the Queen, in which they fully justify the whole of Lord Cornbury's conduct; pronounce the charges made against him by the Assembly false and malicious; and ascribe all the difficulties which had arisen, to the "turbulent, factious, and disloyal principles of two men in the Assembly, Lewis Morris, and Samuel Jenings a Quaker—men notoriously known to be uneasy under all government—men never known to be consistent with themselves—men to whom all the factions and confusions in the Government of New Jersey and Pennsylvania for many years are wholly owing." The language of this address betokened but too clearly the source from which it emanated. It was in Lord Cornbury's own peculiar vein.²

¹ This reply will be found at large in Smith's N. J., pp. 313—336.

² This address was not an act of the Council, nor was it entered on

One of the Council who put his name to this address was Roger Mompesson, the Chief Justice ; and I have felt it to be my duty to go somewhat at large into this transaction, that his conduct upon the occasion might be exhibited in its true light. There may have been possibly a little exaggeration in some of the charges brought against the Governor. There may have been a spirit of factious opposition upon the part of some of the members of the House. But after making every allowance for the influence of party feeling, and a sense of personal obligation for numerous favors conferred by Lord Cornbury, it is impossible not to pronounce upon the Chief Justice a sentence of stern and unqualified condemnation.

The next year Cornbury was removed,¹ and

their minutes ; but was carried about secretly by a messenger of Lord Cornbury's, the signature of a number of the members procured by artifice, and then it was transmitted privately to the Queen. The Lieutenant Governor protested he signed it without ever reading it ; the Chief Justice owned he never examined into the particulars of it. Sandford was the only one who seems to have behaved with any manliness in reference to it. When questioned by the House he admitted having signed it ; and upon being asked if he would acknowledge his fault, he said he signed it as one of her majesty's Council, and was on

ly accountable to her majesty for the same.

Those who put their names to the address were Richard Ingoldsby, William Pinhorne, Roger Mompesson, Thomas Revell, Daniel Leeds, Daniel Coxe, Richard Townley, William Sandford, and Robert Quarry.

Quarry figures in the history of several of the Colonies. Smith says he was of the Council for five governments at one time, viz. : New York, New Jersey, Pennsylvania, Maryland and Virginia.

¹ "Her majesty," says the historian of New York, "graciously listened to the cries of her injured sub-

Mompesson, apprehensive, no doubt, that a similar fate awaited him, surrendered his commission. In 1710, during the administration of Governor Hunter, this address of the Lieutenant Governor and Council was made the subject of much discussion in the Assembly. By a solemn vote, they pronounced it to be a false and scandalous paper. They expelled William Sandford, one of their members, for having signed it, and in an address to Governor Hunter they review it at great length, and comment with much severity upon the conduct of the Chief Justice and Pinhorne, charging them with having made the Courts of Law in which they were Judges, instead of a protection and security to the liberties and properties of her majesty's subjects, the invaders and destroyers of them both. Mompesson did not attempt to justify his conduct.

jects, divested him of his power, and appointed Lord Lovelace in his stead; declaring that she would not countenance her nearest relations in oppressing her people.

"We never had a governor so universally detested, nor any who so richly deserved the public abhorrence. In spite of his noble descent, his behavior was trifling, mean, and extravagant."—*Smith's N. Y.*, 188.

"Edward, Lord Cornbury, grandson of Lord Chancellor Clarendon," says Grahame, "possessed not one of

the qualities by which his distinguished ancestor was characterized, except an exaggeration of his zeal for the Church of England, and his intolerance of all other ecclesiastical associations. The rest of Lord Cornbury's character would have disgraced more estimable qualities; and seems to have formed a composition, no less odious than despicable, of rapacity and prodigality, voluptuousness and inhumanity, the loftiest arrogance and the meanest chicanery."—*Grahame's Col. Hist.*, 454.

The only excuse he assigned for putting his name to the paper was, that he had signed it without examining its contents.

As Chief Justice of New York, Mompesson's conduct, in all matters in which Lord Cornbury was concerned, was of a piece with his behavior in New Jersey. In 1707, Francis McKemie, a Presbyterian clergyman, was arrested by order of Lord Cornbury, for preaching without a license in the village of Newtown, a short distance from New York. He was carried in triumph a circuit of several miles through Jamaica to the city of New York, where he was thrown into jail, and kept in close confinement for upwards of six weeks before he was admitted to bail. Upon his trial—which produced great excitement, and drew together a large concourse of people—Mompesson presided, and is said to have been guilty of the most shameful partiality.¹ He exerted all his influence to induce the jury to find a special verdict—thus putting the defendant entirely in the power of the Court. Failing in this, and the jury without hesitation acquitting the defendant, the Court refused to discharge him until he had paid all the fees of his prosecution.² But we have said more than

¹ Smith's N. Y., 184.

lished at the time by one who styles

² A narrative of this trial was published by himself "A learner of law and a

enough, perhaps, of the first Chief Justice of New Jersey.

The associate of Mompesson upon the Bench of the Supreme Court was William Pinhorne, to whom some allusion has already been made. But as he filled for many years a high judicial station in New York as well as in New Jersey, and was the acting Governor of this colony after the removal of Cornbury and Ingoldsby, and before the arrival of Governor Hunter, he merits a fuller notice. He has too a further claim upon our attention, from the fact, that he is the lineal ancestor in the maternal line of the late Chief Justice of our Supreme Court, the honored President of this Society.¹

lover of liberty." It was reprinted in New York in 1755. An examination of this narrative will hardly justify the charge of partiality which has been made against Mompesson. True, he observes in his charge to the jury, "Mr. Attorney says the fact is confessed by the defendant, and I would have you bring it in specially, for there are some points I am not prepared to answer:" but at the same time he tells them, "If you will take upon you to judge of the law, you may, or you may bring in the fact specially." And when the jury returned with a verdict of "not guilty," and some of the Court began to inquire of them reasons for their verdict, the Chief Justice told the jury,

"they might choose, whether they would or not give any reasons for their verdict." The foreman said, the defendant had not transgressed any law: another of the jury told the Court, they believed in their consciences they had done the defendant justice; and then the verdict was recorded. It ought also to be stated, that while the author of this narrative is severe in his denunciation of Cornbury, not a word of complaint is uttered against the Chief Justice.

¹ Hon. Joseph C. Hornblower, Chief Justice of the Supreme Court, from 1832 to 1846, whose judicial career—distinguished alike for the exhibition of the deepest learning and the loftiest integrity—it will be the

He was originally a merchant in the City of New York, and had gained some distinction in that Province before his removal to New Jersey. He was a member of the Council there during the brief but turbulent administration of Governor Sloughter, when Leisler and Milborne were condemned and executed for treason. He was one of the Judges too of the Supreme Court, at the time that Joseph Dudley—afterwards Governor of Massachusetts—was the Chief Justice. He remained a member of the Council until the arrival of Governor Fletcher in 1692, when he was refused the oath of office, upon the ground of his being a non-resident.¹

He had some years before this purchased a tract of land in New Jersey, containing upwards of a thousand acres, and lying near the Hackensack river, in what is now the county of Hudson. This must have been a place of some note in that early day, for we find a particular description of it in Scot's Model of East New Jersey.² It is there spoken of as a "brave plantation," near unto Snake Hill, on a piece of land almost an island,

grateful task of some future legal analyst to record. Upon his retirement from the Bench, he was appointed senior Professor in the Law School of the College of New Jersey.

¹ Smith's N. J., 133.

² Model of the Government of

East New Jersey, p. 137. This work was originally published at Edinburgh in 1685, and is reprinted in the Appendix to Mr. Whitehead's History of East Jersey under the Proprietors.

and is said to be "well stocked and improved." This became his future residence, and was honored with the name of "Mount Pinhorne," certainly a more euphonious appellation than Snake Hill. It was the seat of simple but not inelegant hospitality, and the home of a numerous family, many of the descendants of which are still among us. He was appointed by Lord Cornbury second Judge of the Supreme Court of New Jersey, and took his seat on the Bench at the first term, which was held at Burlington in November, 1704.

He continued upon the Bench during the whole of Cornbury's administration, and from his connexion with Mompesson, it was scarcely possible for him to escape a portion of that obloquy which attached to the Chief Justice, on account of his subserviency to the Governor. Not only was he connected with the Chief Justice by official ties, but a new and more interesting relation soon came to subsist between them. Pinhorne had several daughters, and the Chief Justice was fond of visiting this "brave plantation" at Snake Hill, lying as it did on the way from his Courts in New Jersey to those in New York. Here he was wont to repose himself after his judicial toils, and being a bachelor, it followed as a very natural consequence, that Miss Martha Pinhorne soon became Mrs. Mompesson.

He was prompted no doubt in his choice by affection, but he may also have thought, that it was a more effectual way of mending his fortune, than by being Chief Justice with a salary of a hundred pounds a year.

But whether owing to his connexion with the Chief Justice, or to his own official misconduct, it cannot be denied that Pinhorne was a most unpopular Judge, and that he rendered himself peculiarly obnoxious to the party who were in opposition to Cornbury. He was one of the signers of the address to the Queen from the Lieutenant Governor and Council, an account of which has already been given; and when a subsequent Assembly came to review that address, they were unsparing in their denunciations of the Second Judge. Among other matters laid to his charge, they accuse him of having denied the writ of *habeas corpus*, the undoubted right and great privilege of the subject, to Thomas Gordon, the Speaker of the House of Assembly, and with having detained him in custody, until he had applied to a son of Pinhorne, an attorney at law, for professional aid, and then, and not until then, admitting him to bail.¹ It is but just, however, to say, that this address of the Assembly has

¹ Smith's N. J., 391.

the appearance of being a little colored, and that its statements ought to be taken with some grains of allowance. While the Assembly were animated no doubt by a very patriotic spirit, and while there was quite enough in the conduct of Cornbury and his Council to furnish ground for complaint, yet, as is usual in such cases, there was evidently a little passion mingled with their patriotism. Nor ought it to be forgotten, that the eloquent leader of the popular party, Lewis Morris—the man who penned most of the addresses of the Assembly at this time—when at a subsequent period he became Governor himself, was denounced almost as strongly, and handled as roughly by the representatives of the people, as ever Lord Cornbury had been. If colonial Governors and Judges were prone to be arbitrary and oppressive, it must be confessed, that colonial Assemblies were sometimes composed of inveterate political scolds.

Upon the removal of Cornbury, Pinhorne continued to be a member of the Council, and united in that congratulatory address to the good Lord Lovelace, which began with these remarkable words, "*Your Lordship has not one virtue or more, but a complete accomplishment of all perfections.*"¹

¹ Smith's N. J., 379.

This was sufficiently discreditable even when addressed to Lord Lovelace, but Grahame—who is usually accurate—makes the matter worse, by supposing that it was used in reference to Cornbury himself.¹

Had Lord Lovelace lived however, Cornbury's Councillors—notwithstanding their sycophancy—would probably have met with as little favor at his hands, as they did at those of his successor, Governor Hunter. But his sudden and premature death,² suspended for a time the storm of indignation which was ready to burst upon them. It extinguished too the fond hopes which had been awakened by the auspicious commencement of his administration, and wrapped the whole colony in grief. “That good man,” said the Assembly in an address to Governor Hunter, “lived long enough to know how much the Province had been oppressed, but not long enough to remove the causes.”

Upon the death of Lord Lovelace, the government devolved upon Lieutenant Governor Ingoldsby. He was a dull, heavy man, and almost as odious to the people of New Jersey as Lord Cornbury had

¹ Grahame's Col. Hist., I. 488.

1709, of a disorder contracted in

² This nobleman, whose accession to the government was hailed with universal joy, died on the 5th of May, 1709, crossing the ferry at his first arrival in the city of New York.—*Smith's N. Y.*, 191.

been. The most earnest remonstrances therefore were made to the Queen for his removal, to which she at last yielded. But before the arrival of another Governor, Pinhorne, who was the President of the Council, exercised the powers of Commander in Chief. He was soon superseded, however, by the arrival of Governor Hunter; but still remained a member of Council, together with most of his old associates.

Governor Hunter made every effort in his power to allay the unhappy divisions which existed in the colony. In his first address to the House of Assembly, he thus expressed himself:—

“I am little used to make speeches, so you shall not be troubled with a long one; if honesty is the best policy, plainness must be the best oratory; so to deal plainly with you, so long as these unchristian divisions, which her majesty has thought to deserve her repeated notice, reign amongst you, I shall have small hopes of a happy issue to our meeting.

“This is an evil which every body complains of, but few take the right method to remedy it; let every man begin at home, and weed the rancor out of his own mind, and the work is done at once.

“Leave disputes of property to the laws, and injuries to the avenger of them; and like good sub-

jects, and good Christians, join hearts and hands for the common good."

But the spirit of party was not so easily laid. He soon found that it was absolutely necessary, in order to propitiate the Assembly, that Pinhorne and his associates should be removed from the Council. The House went so far as to declare, that so long as these individuals remained in places of trust, they could not think their persons or property safe, and that if continued, they would be compelled with their families to desert the Province, and seek some safer place of abode.¹ This savors much of extravagance, and must be regarded as a mere ebullition of party feeling.

The truth is, there existed in the colony at this time two distinctly formed parties, and it is impossible to do justice to the character of those of whom we are speaking, without bearing this fact in mind. We are accustomed to deplore the existence of party spirit at the present day, and the sway which it exercises over the best men; and to think, and speak, as if it were an evil peculiar in

¹ The Assembly, in their Address, mention the names of the individuals whom they were desirous of having removed from places of trust in the Province. They were William Pinhorne, Roger Mompesson, Daniel Coxe, Richard Townley, Peter Sonmans, Hugh Huddy, William Hall, and Jeremiah Basse. Governor Hunter at once dismissed most of them from office, and when he next met the Assembly, he told them he believed they would not be sorry to meet him in such good company.—*Smith's N. J.*, 402.

some measure to our own times. It may be some consolation to find, that nearly a century and a half ago, while the colony was almost in its infancy, and with a population composed in great part of quiet Quakers and peaceful Puritans, this spirit was as rife and as rampant as it has ever been since; that offices—which one would have thought were scarce worth the having—were sought after with quite as much avidity as they are now; and that political parties pursued each other with a ferocity, to which we are absolutely strangers.¹ The dominant party, it is true, did not, as in the mother country, pass bills of attainder, confiscate the estates, and cut off the heads of their opponents; but they expelled them from the Assembly, declared them incapable of sitting, and thundered against them with all the artillery of informations and indictments.

After his removal from the Council, Pinhorne retired into private life, and does not appear to

¹ The violence with which party contests were at this time waged in the mother country, seems to have communicated itself to the colonies. "Complaints," says Lord Campbell in his *Life of Lord Somers*, "are still made, and sometimes with justice, of the licentiousness of our periodical writers; but modern *libellers* are mild, candid, and cautious, compared

with the *wits* of the Augustan age of English literature, when engaged in political controversy. Private character, which is now almost invariably respected, was then attacked with unfeeling exaggerations of what was true, and with unmixed inventions of malignant falsehood."—*Lives of the Lord Chancellors*, IV. 189. Am. ed.

have taken any further part in the public affairs of the Colony. He lived, however, for some years afterwards. His will bears date on the 10th of May, 1719, and was proved on the 12th of April, 1720. Between these two periods he must of course have died. He left behind him one son, John, who was an attorney at law, and for some years Clerk of the House of Assembly; but he did not long survive his father.

Pinhorne and Mompesson were the only Judges of the Supreme Court during the administration of Lord Cornbury. A faithful report of the decisions of that tribunal, during this period, would form a curious and an interesting volume. I am afraid, however, it would not be deemed of very high authority. Some of the earlier proceedings of the Court have already been adverted to. One of the last cases before it while Pinhorne was on the Bench, was that of Thomas Turnbull, against whom an Information had been exhibited for speaking scandalous words of Lord Cornbury. He complained to the Court that he could get no attorney to defend him, although he had offered to pay them their fees. This may seem strange; for attorneys by this time abounded, and fees were not very plentiful. But perhaps the lawyers themselves stood in fear of an Information, if they ventured to appear

against Cornbury. The Court however assigned the perilous task of defending Turnbull, to one of the attorneys who was in attendance. The course which he pursued, was a safe one for himself, if not for his client. He advised Turnbull to plead guilty, and throw himself upon the mercy of the Court. He did so, and then the Court pronounced upon him the following sentence: "That you, Thomas Turnbull, do go to his Excellency and beg his pardon for your offence, and then be imprisoned for three months."¹ But before the term of his imprisonment had expired, Lord Cornbury himself was the tenant of a jail, into which he had been thrown by his exasperated creditors upon his degradation from office, and from which he was never released, until by the death of his father, the Earl of Clarendon, he was elevated to the peerage, and invested with the dignity of an hereditary legislator of Great Britain.²

The removal of Cornbury, was the signal for a series of prosecutions against those who had held office under him. Jeremiah Basse, who had been Clerk of Council, Secretary of the Province, and Prothonotary of the Supreme Court, was selected as the first victim. He was indicted for per-

¹ Minutes of Supreme Court.

Biographia Britannica. Lord Corn-

² Grahame's Col. Hist., I. 457. bury died in 1723.

jury, for altering the rules of the Supreme Court, and for taking some unwarrantable liberties with the book of Freeholders. Peter Sonmans too, was indicted for perjury, and other alleged offences. Fortunately—at least for them, if not for the cause of justice—these indictments did not come on to be tried, until Mompesson was again upon the Bench of the Supreme Court. They were both acquitted; but the House of Assembly, nevertheless, did not hesitate to express their belief in the truth of the charges, and in reference to Sonmans, they scrupled not to declare, that he owed his escape to a packed jury. They presented an address to Governor Hunter, praying him to remove Sonmans from the Council, and arraying against him a long list of accusations.

But Sonmans was not a man to sit down quietly under these attacks. He was a native of Holland, had been educated at Leyden, and held considerable offices under the Prince of Orange, after he became William the Third. He was a son of Arent Sonmans, one of the twenty-four Proprietors, who was shot by a highwayman, on his journey from Scotland to London in company with Robert Barclay. Peter succeeded to his father's estates, and thus became a large Proprietor of East Jersey. He was Surveyor General for some years, a mem-

ber of Council, a Judge of the Court of Common Pleas, and a Representative from the county of Bergen in the House of Assembly. From the charges thus preferred against him, he published an elaborate vindication of himself, which has come down to us. It is a production of some vigor and ability, and not without its value, as letting us into the history of the times. Of the merits of the controversy, it is impossible for us, at this late day, to form a correct judgment; but we may gather something of the spirit and tone of the performance by what he says of Lord Cornbury. He affects to be utterly ignorant of any arbitrary measures that Cornbury ever made use of; speaks of not having had much of his Lordship's conversation, as if that had been a deprivation; and describes him as a nobleman of "extraordinary qualifications, and great sagacity." It was some proof of his intrepidity at least, thus to stand up as the apologist for Lord Cornbury. It shows too, that odious and despicable as was the character of that nobleman, he was not without his friends and admirers.

In reference to Jeremiah Basse, we shall find him, some years afterwards, turning the tables upon his adversaries, and letting them see, that this plan of getting up indictments against political opponents, was a game at which two parties could play.

The successor of Roger Mompesson, as Chief Justice of the Supreme Court, was Thomas Gordon. His judicial career was so brief, that I ought not, perhaps, to say much of him in this connexion. And yet, he filled so large a place in the early annals of our State, and his memory is on so many accounts entitled to be held in respect, that I am sure I shall be pardoned for throwing together a few particulars relating to him.

There is no portion of our ancestors, of whom we may feel more justly proud, than of those who came hither from Scotland. They were for the most part of a class superior both to the Dutch and English emigrants. Grahame, himself a Scotchman—and the author of by far the best colonial history of the United States that has yet been published—observes, that “a great many inhabitants of Scotland emigrated to East Jersey, and enriched American society with a valuable accession of virtue refined by adversity, and of piety invigorated by patriotism.” Many of them were men of property, of family, and of education. The more wealthy were usually accompanied by a numerous retinue of servants and dependants.

One of the most respectable of these Scottish emigrants, was Thomas Gordon. He was a native of Pitlochrie—a place linked by many associations

with our early history—and is supposed to have been not remotely connected with the Duke of Gordon. Involved in some of the political troubles of his own country, and influenced by the flattering representations of Robert Barclay, and the other Scottish Proprietors, he came here with his family, some time in the year 1684. Soon after his arrival, he purchased a plantation in the neighborhood of what is now called the Scotch Plains, and thither he removed with his wife, children, and servants. He became a large Proprietor of East Jersey, and filled various offices of honor and trust under the Proprietary Government—such as Deputy Secretary for the Proprietors, Clerk of the Court of Common Right, Register of the Court of Chancery, Judge of Probate, and an officer of Customs at Amboy. In 1698, he was Attorney General of the Province of East Jersey, and in 1702, was appointed by the Proprietors their Chief Secretary and Register. He was a representative from the city of Perth Amboy in the first Assembly that was held after the Surrender, and he continued to represent it until the year 1710. Upon the death of Samuel Jennings, he was chosen Speaker of the House. He was decided in his opposition to the administration of Lord Cornbury, but he does not appear to have been betrayed into any intemperance of language

or conduct. Upon the resignation of Mompesson, he was appointed by Lord Lovelace Chief Justice of the Supreme Court. His commission bears date on the 28th of April, 1709, and at the May Term following, he took his seat upon the Bench. This office, however, he retained but a few months. He had probably not been bred to the bar, although he had no doubt acquired some legal knowledge in the various judicial stations which he had held, and was regularly licensed as an Attorney in 1704. It is not to be wondered at then, that we find him so soon relinquishing his seat upon the Bench of the Supreme Court, and accepting the appointment of Receiver General and Treasurer of the Province—the duties of which, he no doubt felt, that he was much more adequate to perform. This office he held for nearly ten years. In 1713, he was also appointed Commissioner, as it was termed, for executing the office of Attorney General, in place of Alexander Griffith, who was suspended for “sundry misdemeanors, neglects, and contempts of duty.” When we remember that Alexander Griffith was Lord Cornbury’s Attorney General, and that he filed all his Informations for him, we shall not wonder at his having run up a long account of official delinquencies. Thomas Gordon died in 1722, and was buried in the Episcopal church-yard at Amboy.

There is a Latin inscription on the stone, which marks the spot of his last resting-place on earth, and which commemorates, in touching and graceful terms, his virtues and his worth.¹

Upon the retirement of Thomas Gordon from the Bench of the Supreme Court, we find Roger Mompesson again acting as Chief Justice. This may surprise us. But we have seen, that upon the death of Lord Lovelace, the administration devolved for a time upon Lieutenant Governor Ingoldsby. He at once embraced the opportunity, which his transient return to power conferred upon him, of restoring to office his old friend and fellow-councillor Mompesson. But the Chief Justice did not long enjoy his new honors; for upon the arrival of Governor Hunter, in 1710, he again surrendered his commission, and David Jamison was appointed in his stead.

Governor Hunter,² although described by Ban-

¹ A copy of this inscription will be found in New Jersey Historical Collections by Barber and Howe, p. 309.

² Governor Hunter was a native of Scotland, and when a boy was put apprentice to an apothecary; but he ran away from his master, and enlisted in the British army as a common soldier. His personal beauty and accomplishments won for him the affection of a peeress, Lady Hay, whom he afterwards married; while

his wit recommended him to the friendship of Addison and Swift. In 1707 he was appointed Lieutenant Governor of Virginia, under the Earl of Orkney, but being taken by the French, on his voyage to that colony, he was carried into France, where he remained a prisoner for some time. Swift corresponded with him during his captivity. In one of his letters to him he thus writes: "Our good friend Mr. Addison has been made

croft as "an adventurer, who came to his government in quest of good cheer," was certainly the most popular of all our colonial Governors. Instead of involving himself, as most of his successors did, in interminable disputes with refractory Assemblies, he studied their humors, accommodated himself to their prejudices, and knew how to yield

Secretary of Ireland; and unless you make haste over, and get my *Virginian Bishoprick*, he will persuade me to go with him." And again: "Sometimes Mr. Addison and I steal to a pint of bad wine, and wish for no third person but you." In another letter he says, "I am now with Mr. Addison, with whom I have fifty times drank your health since you left us;" and he makes another allusion to the bishoprick of Virginia. These allusions are explained by the fact, that while Swift was a whig, and a friend of Lord Somers, it was seriously proposed that he should be made Bishop of Virginia, and accompany Governor Hunter to the colony. Had this project been carried out, our Colonial Governors might have exclaimed, as that profligate Peer, the Earl of Wharton, when appointed Lord Lieutenant of Ireland, is said to have done, upon Swift's being recommended to him by Lord Somers as a fit person to be his chaplain; "We cannot afford to countenance such fellows; we ourselves have no character to spare."

Although Governor Hunter became ultimately popular in New York, yet

for some years, he had much difficulty with the Assembly in that Province. Thus he writes to Swift: "Here is the finest air to live upon in the universe; and if our trees and birds could speak, and our Assemblymen be silent, the finest conversation too." He complains of being used like a dog, avers that Sancho Panza was but a type of him, and says, "I have spent three years of life in such torment and vexation, that nothing in life can ever make amends for it."

In 1728, he was appointed Governor of Jamaica, in the room of the Duke of Portland, and died there in 1734. "He had a ready art of procuring money," says Smith; "few loved it more." This led him into gambling speculations, which proving unsuccessful, he was often reduced to straits. He had some literary pretensions. He was the author of the famous "Letter on Enthusiasm," ascribed by some to Swift, by others to Shaftesbury. He is also said to have written a farce, called *Androboros*.—*Swift's Works*. *Smith's N. Y. Smith's N. J. Lives of the Lord Chancellors*, IV. 189. Am. ed.

with a good grace where he could not control. "Your administration," said the Assembly of New Jersey, in one of their last addresses to him, "has been a continued series of justice and moderation." "You have governed," said the Assembly of New York, "well and wisely, like a prudent magistrate, like an affectionate parent. We have seen many Governors, and may see more, and as none of those, who had the honor to serve in your station, were ever so justly fixed in the affections of the governed, so those to come will acquire no mean reputation, when it can be said of them, their conduct has been like yours."

He drew around him as his friends and advisers, men of the highest character and influence in both Provinces. His appointments to office were for the most part made, from among those who had distinguished themselves by their opposition to Lord Cornbury. Lewis Morris, who had been the leader of the opposition in New Jersey, was made Chief Justice in New York; and David Jamison, a popular lawyer in New York, was made Chief Justice of the Supreme Court of New Jersey. Jamison had distinguished himself by his able and intrepid defence of McKemie, the Presbyterian clergyman, whose case has already been referred to. He filled the office of Chief Justice during the whole of Governor Hunter's admin-

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istration, and appears to have discharged its duties with credit to himself, and satisfaction to the public. His associate upon the Bench was Thomas Farmar, of whom, as he subsequently became Chief Justice, we may have occasion hereafter to speak.

The administration of Governor Hunter was a period of almost unbroken tranquillity. Upon one occasion only, was this harmony seriously interrupted. On the fourth day of April, 1716, a new Assembly was convened at Amboy; and the party, who had been driven from power for their adhesion to Cornbury, seemed about to regain their ascendancy. While their opponents had been slumbering in fancied security, they had evidently rallied, and had succeeded in throwing into the House a large number of their friends. Daniel Coxe, who had been one of the most obnoxious members of Cornbury's Council, was chosen Speaker. The consequence was, that the House became at once embroiled in a controversy with the Governor, and the business of the session was obstructed and delayed. Nor was this all. Flushed with their victory, and emboldened by success, prosecutions were at once set on foot against the principal officers of the Province. .

Amongst the rest, an Indictment was found against Jamison, the Chief Justice. The occasion

of it was this. At the November Term of the Supreme Court, held at Burlington in 1715, a grand-juror was challenged for his refusal to take the oath. He alleged that he was a Quaker, and claimed the benefit of an act of Assembly, which had been passed a few years before, and which provided, that the solemn affirmation of the people called Quakers, should be accepted in lieu of an oath. But on the other hand it was contended, that this act of Assembly had been virtually repealed by an act of Parliament, passed in the first year of the reign of George the First, by which, it was insisted, Quakers refusing to be sworn, were excluded from serving as jurors. This position was maintained with much zeal by many of the lawyers, more especially by those who had been the friends of Lord Cornbury, and who shared with him in his aversion to the Quakers. The Chief Justice however decided, that this was an entire perversion of the statute of George the First, and that it never could have been designed to repeal or invalidate the act of Assembly. He therefore overruled the exception, and directed the Clerk to take the affirmation of the grand-juror. But this the Clerk, presuming to be wiser than the Court, positively refused to do. The consequence was, that there was no Grand Jury sworn or affirmed during that Term.

The Chief Justice of course pronounced the Clerk guilty of a contempt of Court, and imposed a fine upon him. He could do no less; he might have done much more. And yet for this, he was actually indicted, at the next Court of Quarter Sessions, and that too in the Quaker county of Burlington. At the next Term of the Supreme Court, held in May 1716, before the Grand Jury were sworn, the Chief Justice in open Court delivered a speech, in which he calmly reviewed the whole proceeding, and with much dignity vindicated the course which he had pursued. A copy of this speech has been preserved, and it reflects no little credit upon the temper, as well as the talents of the Chief Justice.

Governor Hunter, who, if he had some of the bluntness, had much of the spirit of the soldier about him, felt himself called upon to come to the aid of his Chief Justice. He put forth, therefore, an address to the public, which he called an answer to an argument against the validity and force of a certain act of Assembly, but which looks very much like a Proclamation, declaratory of what the law was, according to his understanding of it.

"Whereas," he says, "there has been of late an objection, without any foundation in law or reason, started against the people called Quakers be-

ing employed in any places or posts of profit or trust in this Province ; which objection, in my opinion, has a tendency of no less consequence than the rendering the municipal laws thereof of no force or effect for the future, and subverting the civil government ; I have judged it necessary for the satisfaction of the minds of the scrupulous, and stopping the mouths of the clamorous and seditious, until a more effectual method may be pursued, if necessity so require, to set that affair in so clear a light, that the half-sighted may see, and the half-witted be convinced of the unreasonableness and absurdity of that objection. The rest can see and understand without my help." He speaks of the woful condition into which the plantations would be plunged, if such laws as a Legislature, lawfully constituted, might enact for the good government and ease of the subject, should by implication or construction be deemed to be repealed, upon the bare suggestion of any petty attorney, who may excuse himself by affirming that he has a right to say what he thinks fit for the benefit of his client. He concludes in this wise : "To sum up the whole I do affirm, that an Act of Assembly, entitled, 'An Act that the solemn affirmation and declaration of the people called Quakers, shall be accepted instead of an oath in the usual form,' &c.,

passed in the last Assembly of this Province, stands in full force and vigor, being passed by the Sovereign's especial command, not having been disallowed or disapproved by the Sovereign, nor repealed or made void by any subsequent act of Parliament or Assembly ; and that by virtue of that act, Quakers, or reputed Quakers, when duly qualified as that act directs, are capable of offices of profit and trust in this Province ; and that the asserting or affirming the contrary, serves only to open a gap to pretenders to law, to plead against the validity of any or all your municipal laws, when either their selfish views, or perverse purposes, may suggest to them so very ridiculous and absurd a notion, and to weaken (as I verily believe it is intended) the administration, and unhinge or dissolve the Government." Even if his Excellency had not been in the right, it would have been somewhat difficult to answer such arguments.¹

¹ This address of Governor Hunter, together with the speech of the Chief Justice, and his charge to the Grand Jury at Burlington, were published at the time in a pamphlet, a copy of which is to be found in the State Library.

The same difficulty, with regard to the affirmations of Quakers, arose in Pennsylvania, but was much more serious and embarrassing there, in consequence of the course pursued by

Governor Gookin. He held that their act of Assembly was absolutely repealed by the statute of George the First ; and refused to permit Quakers to serve as jurors, to give evidence in criminal cases, or to hold any office of profit or trust in the Province. This led to a very long *representation* from the General Assembly, distinguished by that "ready flow of grave yet fretful rhetoric and indefatigable reiteration," of which Grahame

The Indictment against the Chief Justice was removed into the Supreme Court, and at the Term of May, 1716, Judge Farmar presiding, it was on motion of the Attorney General ordered, that the Indictment be quashed, it being found against the Chief Justice of the Supreme Court, for doing his duty in the execution of his office; and it was further ordered, that process do issue against all such persons as were in any way instrumental in procuring the same.¹

The individual who seems to have been chiefly instrumental in stirring up these prosecutions, was Mr. Jeremiah Basse, Lord Cornbury's Secretary. A double motive probably animated him; for while he was paying off some old political scores, he was at the same time indulging his zeal for the Church, which he thought, or affected to believe, was in danger, from the concessions made to the Quakers. Basse, however, was an attorney of the Supreme Court, and liable therefore to be dealt with in a very summary way, for his behavior upon this occasion. Nor was the Court reluctant to exercise the power

speaks. In the course of it, they refer, with marked approbation, to the address of Governor Hunter and the "speech" of the Chief Justice of New Jersey, and quote largely from both those documents. It was not until

1725 that the difficulty was finally settled in Pennsylvania. — *Proud's Pa.*, II. pp. 74—93. *Grahame's Col. Hist.*, II. 50.

¹ Minutes of Supreme Court.

to which he was thus amenable. For no sooner was the Indictment against the Chief Justice quashed, than the following order was made: "That Jeremiah Basse, one of the attorneys of this Court, for being instrumental in sowing discord and sedition among divers of his Majesty's subjects within the Province, and also in aiding and procuring certain Indictments to be found against the Chief Justice of this Court, and the principal officers of this Province, by a Grand Jury of an inferior jurisdiction, for doing their duty in their respective offices, be suspended from practising in this Court, and all other Courts in this Province; and that the Attorney General do issue process against him for a misdemeanor."¹

Basse would not probably have ventured upon these proceedings, if he had not been countenanced and encouraged by the party, now in the majority in the Assembly. Their power, however, was not destined to be of long duration. Governor Hunter, finding that the House was not disposed to dispatch any business, prorogued it. When summoned to meet again, nine only of the members made their appearance. The Speaker and most of his political friends absented themselves. "This was

¹ Minutes of Supreme Court.

done to embarrass the administration, by preventing any supplies from being voted for the support of Government. After waiting some days, the Governor was requested to issue his warrant commanding the attendance of the absent members. Four of them presently appeared, and then, a quorum being formed, they proceeded to choose a new Speaker, John Kinsey,¹ expelled the absent members, and ordered writs for new elections to supply their places. Some of them were returned a second time, but they were declared incapable of sitting. Harmony was thus restored, and every thing went on smoothly again.² The Governor told them he heartily approved of the worthy choice they had made of a Speaker; and that the conduct of the gentleman who had last filled the chair, must have convinced them, that there was a combination between him and his associates to defeat all the purposes of their meeting. The Assembly in reply echoed back the same sentiment. "Our late Speaker," say they, "has added this one instance of folly to his past demeanor, to convince us and the world, that in all stations, whether of a councillor, a private man, or a representative, his

¹ He was the father of John Kinsey, and the grandfather of James Kinsey, Chief Justice of Pennsylvania, Chief Justice of New Jersey.

² Smith's New Jersey, 406.

study has been to disturb the quiet and tranquillity of this Province, and act in contempt of laws and government. Our expulsion of him, we hope, evinces that we are not the partisans of his heat and disaffection to the present government."

Basse was returned to the House of Assembly, in place of one of the expelled members. He came as representative from Cape May, to which county he seems to have taken refuge, upon that dispersion of his party, which followed the removal of Cornbury. Whether ashamed of his late conduct, or sensible that he was in a minority, he appears to have demeaned himself creditably; and on the fifteenth of January, 1716, made a speech in the House which, from its having been entered at large on the journal; must have been deemed quite an effort in the way of parliamentary eloquence. As it is the only speech of that day which has been handed down to us, it is a matter of some curiosity.¹ The theme of his discourse is the financial condition of the Province, which at that time was deplorable enough. This he ascribes to four causes; the fruitless expeditions to Canada, intestine discords and dissensions, negligence of public officers,

¹ This speech will be found in a volume in the State Library, in which are bound up, with the votes of the Assembly, a miscellaneous collection of pamphlets, some of which are of much interest. It is lettered on the back, Votes and State Papers. Vol. I.

and scarcity of money. What he says about discords and divisions may amuse us, after the specimens we have had of his own behavior. "*Hinc illæ lacrymæ*," says he, "here is the source and rise of all our misfortunes, our divisions, heats, discords, and animosities. We are using one another as the heathen did the primitive Christians, dressing each other up in the skins of wolves and bears, and then beating them as such." "Would to God, Mr. Speaker," he exclaims, "we could each of us learn to look upon another to be better than himself; to let that charity, which is the golden bond that connects heaven and earth together, (and without which the most splendid gifts, natural or acquired endowments, are but as the sounding brass and tinkling cymbal,) govern both our lives and actions. We complain, Mr. Speaker, of bad crops, blasts, mildews, and sometimes of epidemical distempers raging amongst us. It is no wonder if our common Parent sends these scourges, that by these means he might teach us to love one another. Let us then take that advice, which his Excellency once gave the representative body of this Province; *let us leave disputes to the laws, and injuries to the avenger of them; let each one weed the rancor out of his own heart.* Let each of us look upon parties and divisions as a common enemy, a common

evil, and use our utmost endeavors to quench that fire that has hitherto so raged in this Province, that it has more or less affected all persons, all relations, our bodies, our reputations, and our estates. Let us unite in love, and then, how inexpressibly beautiful would such a union be? How would it strengthen our interests, advance our estates, restore our decayed credit, and make us a truly happy Province."

All this is very fine ; and yet this is the man who, but a few months before, had been thrown over the bar for sowing discord and sedition in the Province ; and was for turning every thing upside down, because Quakers were permitted to serve as jurors, and exercise offices of profit and trust. So much easier was it then, as it is now, to teach by precept than example. Basse seems by his course in the Assembly to have acquired the confidence of Governor Hunter, by whom he was appointed Attorney General in 1719. His commission was renewed by Governor Burnet in 1721. He died in 1725. His will, which was dated in January, 1724, breathes a spirit of ardent devotion to the Church of England, which he denominates "the best of churches," of which he calls himself an unworthy member, and in whose communion he expresses a desire to die, and to be buried according to its rites and ceremonies.

No other events of importance occurred while Jamison was Chief Justice, nor have any of his judicial opinions been preserved. We have however a copy of his charge to the Grand Jury at Burlington, in May Term, 1716, from which it might be inferred, that he was quite as much of a theologian as a lawyer. All his authorities are drawn from the Bible, and a very considerable portion of the charge is made up of passages from the Old and New Testament. It is not unlikely that he was a descendant of the Puritans, whose ideas of criminal jurisprudence were derived from the Levitical code, rather than from Hale and Hawkins. In the list of capital offences given by him, we find heresy and witchcraft included. Not to have believed in *witchcraft* at that day, would, I suppose, of itself have been deemed *heresy*. But I am happy to say, that so far as I have been able to discover, no prosecution for this offence ever stained our judicial records.¹

¹ However devoutly our fathers may have believed in the existence of witches, they suffered them to live unmolested, and the consequence was, that in New Jersey, as in Penn's domain, "neither demon nor hag ever rode through the air on goat or broomstick; and the worst acts of conjuration went no farther than to foretell fortunes, mutter powerful spells over quack medicines, or dis-

cover by the divining-rod the hidden treasures of the Bucaniers."—*Bancroft's U. S.*, II. 393.

There was, however, a trial for witchcraft in Pennsylvania, as early as 1684, at which Penn presided. After a charge from the Governor, the jury rendered the following verdict: "The prisoner is guilty of the common fame of being a witch, but not guilty as she stands indicted."

Governor Burnet, who succeeded Hunter in 1719, continued Jamison in office. But although he had been Chief Justice of New Jersey for so many years, he still resided in the City of New York. This was felt to be a great grievance, and subjected attorneys and suitors to much trouble and expense. Governor Hunter, however, contrived to keep the Assembly in such good humor, that no public complaint was made of it in his time. But in 1723, the House presented an address to Governor Burnet, representing that, as it was not the happiness of the Province to have his Excellency constantly residing among them, it would be a great satisfaction that the Chief Justice should. They speak of the hardship and inconvenience of being obliged to go from the most distant parts of the Province to the City of New York, to put in special bail, or get the allowance of a *habeas corpus*, *certiorari*, or other remedial writ; and as there were persons living in the Province, who were quite competent to execute the office, they express an earnest hope that the Governor would be pleased to select some one among them for the Chief Justice. The Governor took the address in good part, and promised a speedy compliance with their wishes; and thereupon the House resolved, that there should be paid to a Chief Justice, who would ride the Circuit of the

several counties of the Province, the sum of one hundred pounds yearly, in addition to his ordinary salary.

William Trent, who was at that time Speaker of the House of Assembly, was at once appointed Chief Justice in place of Jamison. He was not a lawyer by profession, but had filled for many years a high judicial post in Pennsylvania; and was withal a man of strong sense, of business habits, and of strict integrity. He too was a native of Scotland—from the town of Inverness—and with a brother, whose name was James, came to this country at an early day. He settled in Philadelphia, where he became an extensive and successful merchant. The house which he there occupied is still standing, although it retains few traces of its ancient grandeur. It was long known as “the slated-roof house of William Trent.” It had been the city residence of William Penn and his family. It afterwards became a celebrated boarding-house, and John Adams, and other members of the first Congress, lodged in it. Those who are curious in such matters, may find a full account of it in Watson’s Annals of Philadelphia. Trent was for many years a Judge of the Supreme Court of Pennsylvania, and Speaker of the House of Assembly.

In 1714, he purchased Mahlon Stacey’s planta-

tion of eight hundred acres, lying on both sides of the Assanpink, upon which the cities of Trenton and South Trenton now stand. To this place he removed some years afterwards, and in 1721 was chosen a representative to the Assembly from the county of Burlington. In 1723, he was made Speaker of the House, and in November of the same year, was appointed Chief Justice of the Supreme Court—his commission reciting, that the letters patent granted unto David Jamison, the late Chief Justice, were disannulled. He took his seat on the Bench at Burlington, on the fourth Tuesday of March, 1724.

He did not, however, long live to enjoy the honors, or discharge the duties of Chief Justice. He died suddenly, from an attack of apoplexy, on the twenty-fifth of December, 1724, universally beloved and much lamented. None of his descendants, I believe, remain, but his name will long live in the memory of Jerseymen, for it is borne by the capital of our State.¹ Some years before his death, a town was laid out upon his estate, which, in honor

¹ The name of William Trent frequently occurs in the "Logan letters," in the possession of the American Philosophical Society. He is commended for his "thorough skill and insight into trade." James Logan speaks of him as a "noted churchman," but always in terms of respect. In one of his letters, he refers feelingly to his sudden death, as "another instance how little anxious we ought to be about the affairs of this world."

of him, was called *Trent's Town*, the name by which it was originally known. It had before, says Smith, been significantly called "Little Worth." It was, however, at the death of the Chief Justice, a town only in name—containing, as it did, but two or three houses. The spot on which the City Hall now stands, was then in the midst of a dense woods, through which a solitary foot-path wound its way to the old mill—then called Stacey's, but now known as Waln's Mill. In 1719, the Courts for the County of Hunterdon were held here for the first time. Trent presented to the county the lot on which the first Court House was built. It was the lot now owned by the Trenton Banking Company, and on which their banking house stands. It was not until 1790, that Trenton was made the seat of government of New Jersey.¹

In tracing the history of our Courts, we have come to the administration of Governor Burnet; and it seems to be a fitting place in which to speak of the Court of Chancery. For we are told it was a Court in which Governor Burnet took especial delight, and in which he loved to display his parts;

¹ Barber and Howe's N. J. Hist. Col., 283. The historical notice of Trenton contained in this work, is taken from a series of articles, originally published in the Trenton State Gazette, and written by the Rev. Eli F. Cooley, pastor of the Presbyterian church in Ewing.

and although no lawyer,¹ yet being a man of books, and fond of the society of men of letters, he is said to have made in it a very respectable figure.²

The Court of Chancery, for some reason or other, seems never to have been a popular favorite

¹ In the *Encyclopædia Americana*, H. 336, Governor Burnet is said to have been "originally bred to the law." But however this may be, he never pursued his profession. He was the eldest son of the celebrated Bishop Burnet, and was born at the Hague in March, 1688. He was named after William the Prince of Orange, who stood his godfather. His fortune, which was at one time considerable, was wrecked in the South Sea scheme, and like most royal Governors, he was poor when he came to this country. The love of money, however, was a vice from which he was entirely free, and he carried nothing away with him but his books. In 1728, he was removed from the government of New York and New Jersey, and transferred to that of Massachusetts and New Hampshire. Although the son of a bishop, and said to have been a man of piety, yet he was of a convivial disposition, and by no means distinguished by his seriousness of character. His levity shocked the good people of New England. Upon one occasion, he was dining with an *old charter senator*, and being asked, whether it would be most agreeable to his Excellency that grace should be said standing or sitting; the gov-

ernor replied, "Standing or sitting, any way or no way, just as you please." A deputation was sent to conduct him in state to his new government. They met him on the borders of Rhode Island. He complained of the long graces that were said by the clergymen on the road, and asked when they would shorten. One of the committee, the facetious Colonel Tayler, answered, "The graces will increase in length till you come to Boston; after that, they will shorten till you come to your government of New Hampshire, where your Excellency will find no grace at all."

He died in September, 1729, from the effects of a violent cold contracted by the oversetting of his carriage upon the causeway at Cambridge. He was a man of superior talents, and of an amiable character. He published some astronomical observations in the transactions of the Royal Society, and an essay on scripture prophecy.—*Allen's Biog. Dic. Belknap. Hutchinson. Grahame.*

² Smith's N. Y. 240. Governor Burnet however had one foible, which would seem to have disqualified him in some measure, for the duties of a Chancellor. He used to say of himself, "I act first, and think afterwards."

in this country.¹ The large discretionary power which it is thought to confer upon one man; the fact that the people appear to be in some measure excluded from it; and that it altogether dispenses with the cherished mode of trial by jury, may perhaps account for the prejudice entertained towards it. The early annals of New York and Pennsylvania, abound with manifestations of the jealousy and distrust with which this tribunal was regarded. It was in 1711, that Governor Hunter first began to exercise the office of Chancellor in New York; but it was made a subject of constant complaint and remonstrance by the Assembly; and so unpopular

¹ Even in England the Court of Chancery has never been a popular tribunal. It has at least always been deemed a fair subject for the pen of the satirist. Butler, who indeed spared nothing, thus writes:

"Does not in Chancery every man swear,
What makes best for him in his answer?
And whilst their purses can dispute,
There is no end of th' immortal suit."

Hudibras, III. Cant. 2.

Swift represents Gulliver as having been almost ruined by a suit in Chancery, which was decreed for him with costs.

Even the learned Selden thus speaks: "Equity is a roguish thing: for law we have a measure—know what to trust to; equity is according to the conscience of him that is Chancellor, and as that is larger or narrower, so is equity. It is all one as

if they should make the standard of the measure we call a foot, a Chancellor's foot; what an uncertain measure would this be! One Chancellor has a long foot, another a short foot, a third an indifferent foot: it is the same thing in the Chancellor's conscience."—*Selden's Table-Talk*.

In fact, it was not until near the close of the reign of Charles II. that the Court of Chancery was entitled to much respect. Lord Chancellor Nottingham, who died in 1682, has been called the Father of Equity. He it was, who first reduced it to a regular and cultivated science; and re-deemed it from the disgrace of being supposed to depend upon the individual opinion or caprice of the Chancellor.—*Lives of the Lord Chancellors*, III. 329. Am. ed.

did it become in that Province, that little or no business was transacted in it for many years. In 1727, it was resolved by the House of Assembly, that the erection of a Court of Chancery in that Colony, without the consent of the General Assembly, was unwarrantable and illegal, a manifest oppression and grievance to the people, and of pernicious consequence to their liberties and properties. An ordinance was soon after passed to remedy the abuses of the Court, and reduce the fees of its officers; and from that time, until 1756—when William Smith wrote his History of New York—we are informed that the wheels of the Chancery rusted upon their axles, and that its practice was contemned by all gentlemen of eminence in the profession.¹

In 1720, a Court of Chancery was first established in Pennsylvania, by Governor Keith, with the concurrence of the Council and Assembly. It was declared to be absolutely necessary in the administration of justice, for the purpose of mitigating the rigor of the law, whose judgments are tied down to fixed and unalterable rules, and for opening the way to the right and equity of a cause, for which the law cannot in all cases make a sufficient provision.² But it happened, unfortunately, a few

¹ Smith's N. Y., 270.

² Proud's Pa., II. 126.

years afterwards, that John Kinsey, a Quaker lawyer of eminence, and afterwards Chief Justice of that Province, having occasion to transact business in the Court, appeared with his hat on his head, as was the custom with members of his society. The Chancellor, Sir William Keith, who stood much upon form, ordered his hat to be taken off; which was accordingly done by one of the officers of the Court. This gave great offence to the Quakers; insomuch, that at a Quarterly Meeting, held in the City of Philadelphia, a committee was appointed to wait upon the Governor, and present to him an address, in which they gravely complain of the act in question, as a direct infringement of their rights and liberties. And such was the excitement produced, and so loud the clamor that was raised, that the Chancellor found it necessary to make a solemn order, by which it was provided, that it should be a standing rule of the Court of Chancery, for the Province of Pennsylvania, in all time to come, that any person professing to be one of the people called Quakers, should be permitted to address the Court, without being obliged to observe the usual ceremony of uncovering his head.¹ But however satisfactory this concession may have been deemed

¹ Proud's Pa., II. 197.

at the time, we find, not many years afterwards, that the Court was considered to be "so great a nuisance," that it was entirely laid aside; and from that day to this, I believe, there has been no Court of Chancery in Pennsylvania. It might be curious to inquire, what influence the trifling incident to which I have alluded may have had, in bringing about such a result; a result, I may add, which has been much regretted by some of the most enlightened jurists of that State.¹

In New Jersey, however, the Court of Chancery has encountered less hostility than in her sister States. While there have always been found individuals, who have doubted the propriety of its existence as a separate tribunal, yet by the great mass, not only of the profession, but of the people at large, it has ever been deemed a useful and an indispensable part of our judicial system. It is said in some of our histories, that the first Court of Chancery ever held in New Jersey was in 1718. It was then, indeed, that the Governor for the first time assumed to act as Chancellor without the as-

¹ "The experience of England," says Mr. Binney, in his beautiful Eulogium on Chief Justice Tilghman, "and of most of these States, is better than volumes, to show, that the purity and vigor of both law and equity, are maintained by preventing their intercourse in the same tribunal. It is the misfortune of Pennsylvania, that the want of a Court of Chancery has left her tribunals no alternative, but that of attempting this difficult incorporation."

sistance of his Council ; but it is a great mistake to suppose that there had been no Court of Chancery in the Province before. The Ordinance of Governor Franklin in 1770, truly declares, "that there always has been a Court of Chancery held in the Province of New Jersey." Under the Proprietary Government, it was, as we have seen, a part of the Court of Common Right, and continued to be held by the same Judges until 1698. How it was composed from that time until 1705, does not distinctly appear, but there is every reason to believe that it was held by the Governor and Council.¹ In 1705, however, we find Lord Cornbury, by virtue of his commission as Governor, and with the advice and consent of the Council, passing an Ordinance, for the erection and establishment of a High Court of Chancery in the Province of New Jersey. The Ordinance recites, "that it is absolutely necessary that a Court of Chancery should be established in this Province, that the subject may find remedy in such matters and things as are properly cognizable in the said Court, in which the common law by reason of its strict rules cannot give relief;" and it provides, that the Governor or Lieutenant Governor for the time being, and any three of the

¹ Griffith's Law Reg., IV. 1183.

Council, shall constitute the said Court; and it authorizes them to hear and determine all causes in the said Court, which from time to time shall come before them, as near as may be, according to the usage or custom of the High Court of Chancery in the kingdom of England. It was further provided, that there should be four stated terms in each year, and that the Court should be open on Thursday of every week, at Burlington, to hear motions, and make rules and orders thereon.¹

This Ordinance continued in force until Governor Hunter's administration, when he claimed the right to exercise the powers of Chancellor alone, and without the aid of his Council. This was thought to be an undue exercise of authority upon his part, and occasioned some complaint at the time, but his conduct met with the approbation of the King;² and under this sanction, and without any new Ordinance, so far as I have been able to discover, the Governor continued to act as Chancellor until 1770.

The first Ordinance for the regulation of fees in the Court of Chancery, was adopted in 1724, during the administration of Governor Burnet. These fees, particularly those allowed to the counsel and

¹ Book A. A. A. of Commissions, 54.

² Whitehead's East Jersey, 167. Note.

solicitors, would be deemed liberal even at the present day. At that time, they were thought to be very extravagant, and were made the subject of frequent complaints. A Committee of Council was therefore appointed in 1730, under the administration of Governor Montgomery, for the purpose of revising and moderating the same, so as to make them more conformable "to the circumstances of the Province." They performed the task assigned to them with a most unsparing hand. Their object would seem to have been the same, with that avowed by Abraham Clarke at a later period, when he introduced the bill, known by the name of "Clarke's Practice Act." "If it succeeds," said he, "it will tear off the ruffles from the lawyers' wrists."¹

If the Court of Chancery was the delight of Burnet, it was evidently the aversion of Montgomery. In New York, he countenanced the clamors against it; declined to sit as Chancellor, until enjoined by special orders from England; and then obeyed the command most reluctantly, frankly confessing, that he thought himself wholly unqualified for the station. "He never," says Smith, "gave a single decree, nor more than three orders; and these, both as to matter and form, were first settled

¹ Sedgwick's *Life of Livingston*, 434. Note.

by the counsel concerned.¹ It may be presumed, therefore, that he regarded, with no little complacency, the dissatisfaction which the Court was beginning to excite in New Jersey. As an evidence of the growing jealousy with which its proceedings were here watched, the same Committee who were appointed to cut down its fees, were also directed to inquire into the abuses which had crept into the practice of the Court, and to propose suitable remedies. They appear to have made very thorough and searching inquiries, and some of the abuses which they brought to light, may perhaps be recognized as existing at a much later day, and not very remote from the present time.

They complain, for instance, that in drawing bills, matters of conveyance and inducement are set forth too much at length, whereas, they ought to be set forth in the briefest manner possible, and the points in question alone fully set forth; and the remedy which they propose is, that counsel, setting their hands to any such bill, should pay all the charges which the parties are subjected to, by reason of the superfluous matter.

Another abuse which they point out is, that in the drawing of bills, they find it usual to amass a

¹ Smith's N. Y., 273.

number of iniquities against the defendant as mere matter of form; and to turn the whole things charged into questions afterwards; "whereas"—it is pertinently remarked—"when a fact is once properly charged, there needs few, and often no questions to bring out the truth concerning it, other than the general one, to answer the things charged;" and the remedy they propose is, that solicitors in drawing their bills should keep to the truth of their case, and avoid inserting things purely as matters of form; and that counsel, under the same penalty as before, should set their hands to no bill, "with any questions therein, which can bring no further answer than the charge does require."¹

¹ In the Life of Lord Ellesmere—Lord Chancellor in the reign of Queen Elizabeth—we have a striking instance of the vigor with which he strove to correct the prolixity of Chancery pleadings in his time. In the case of *Mylward v. Weldon*, there being a complaint of the length of the Replication, and the Lord Chancellor being satisfied that "whereas it extended to six score sheets, all the matter thereof which was pertinent might have been well contained in sixteen," an order was made by him in these words:—"It appearing to his Lordship by the confession of Richard Mylward, the plaintiff's son, that he did devise, draw, and engross the said Replication, and because his Lordship is of opinion that such an

abuse is not in any sort to be tolerated—proceeding of a malicious purpose to increase the defendant's charge, and being fraught with much impertinent matter not fit for this Court; it is therefore ordered, that the Warden of the Fleet shall take the said Richard Mylward into his custody, and shall bring him into Westminster Hall on Saturday about ten of the clock in the forenoon, and then and there shall cut a hole in the midst of the same engrossed Replication, which is delivered to him for that purpose, and put the said Richard's head through the same hole, and so let the same Replication hang about his shoulders with the written side outward, and then, the same so hanging, shall lead the same Rich-

There were various other abuses exposed, tending to delay the progress of causes, and enhance the expense of proceedings. One is reminded of that quaint old tract on "the abuses and remedies of Chancery," presented to the Lord Keeper, in the reign of James the First, by Mr. George Norburie, to be found in Mr. Hargrave's collection of tracts; in which poor suitors are represented as coming into the Court of Chancery, "like a flock of sheep to a bush for shelter, and are there more wet than they were in the open field; and yet the bush will not part without a fleece, and out of which they go, with the same note they came in, *pitifully complaining*." And he asks, "Will your Lordship know the reason, and who are the causers thereof; I answer in a word, Counsellors. For well near with every one of them, nothing is more familiar, than so soon as the bill is exhibited, presently to ruminate upon something that may be moved . . . ; and if he chance to get a new order, then he thinks he has done a great exploit, and bound the poor

ard, bareheaded and barefaced, round about Westminster Hall whilst the Courts are sitting, and shall show him at the bar of every of the three Courts within the Hall, and then shall take him back again to the Fleet, and keep him prisoner until he shall have paid ten pounds to her Majesty for a

fine, and twenty nobles to the defendant for his costs in respect of the aforesaid abuse, which fine and costs are now adjudged and imposed upon him by this Court for the abuse aforesaid."—*Lives of the Lord Chancellors*. II. 172. Am. ed.

client to him for ever. The next day he is overthrown; yet will he not so give it over; but he will make more work for himself and his adverse pleader, till his client has scarce a round shilling in his pocket."

The Committee seem to have come to very much the same conclusion, and to have laid all the sins of the Court upon the heads of the lawyers. Their report, however, was approved of, and the suggestions which they made, were embodied in an Ordinance of the Governor and Council. How far these evil practices were corrected, we have no means of ascertaining; but if checked for the time, it is very certain they sprung up afterwards, and produced a luxuriant growth, which it has required the pruning hand of the Legislature, from time to time, to lop off.

By far the most important bill ever filed in the Provincial Court of Chancery, was the one known by the name of the Elizabethtown Bill in Chancery, to which some reference has already been made. The complainants in this suit, were John Earl of Stair, and thirty-eight other Proprietors of the Eastern Division of New Jersey; and the defendants, were Benjamin Bond and others—to the number of about four hundred and fifty—claiming under the Elizabethtown Associates, and distinguished by

the name of the Clinker-Lot-Right-Men. The bill was filed in 1745, and is drawn out into the extravagant length of about fifteen hundred sheets. It is signed by James Alexander, the father of Lord Stirling, and Joseph Murray, a distinguished lawyer of New York. It was printed by James Parker in 1747, and, with the accompanying documents, makes a folio volume of one hundred and sixty pages. It is entitled—"A Bill in the Chancery of New Jersey, at the suit of John Earl of Stair, and others, Proprietors of the Eastern Division of New Jersey; against Benjamin Bond, and some other persons of Elizabethtown, distinguished by the name of the Clinker-Lot-Right-Men. With three large Maps done from copper-plates—To which is added the Publications of the Council of Proprietors of East New Jersey, and Mr. Nevill's speeches to the General Assembly, concerning the Riots committed in New Jersey, and the pretences of the Rioters and their Seducers. These papers will give a better light into the History and Constitution of New Jersey, than any thing hitherto published, the matters whereof have been chiefly collected from Records."

The answer was not put in until 1751. It is almost as prolix as the bill itself. The Defendants, not to be behindhand with their adversaries, had

the answer also published in 1752, and with a title quite as long as that prefixed to the bill. It runs thus :—"An Answer to a Bill in the Chancery of New Jersey, at the suit of John Earl of Stair, and others, *commonly called* Proprietors of the Eastern Division of New Jersey, against Benjamin Bond and others claiming under the original Proprietors and Associates of Elizabethtown. *To which is added*, nothing either of the Publications of the Council of Proprietors of East New Jersey, or of the Pretences of the Rioters and their Seducers; except so far as the Persons meant by Rioters, pretend title against the Parties to the above Answer; but a great deal of the Controversy, though much less of the History and Constitution of New Jersey, than the said Bill. *Audi alteram partum.*"

The counsel who put their names to the answer, were William Livingston, afterwards Governor of New Jersey, and William Smith, jun., who became Chief Justice of New York, and after the Revolution, Chief Justice of Canada.

The parties to this suit seem to have been at issue upon all points. The Defendants in their answer, without formally excepting to the right of the Governor to act as Chancellor, nevertheless protest, that Brigadier Hunter was the first Governor of New Jersey, that ever assumed to himself

the power solely to hear and determine causes in Equity; and that neither he, nor any of his successors, ever received any special order from the crown to erect such a Court. They repudiate the name of *Clinker-Lot-Right-Men*, by which they are called in the bill; declare it to be nothing more than a "nick-name," given to them by their opponents; and that the only reason why the Complainants are so fond of using it, and why they have so often "garnished their bill with it," was to bring the Defendants into derision, and to cast "a slur and odium" upon them and their title. They even go so far as to deny, that Elizabethtown was ever named after the wife of Sir George Carteret, the first Proprietor of New Jersey, but insist, that it was named by those under whom they claim, "in memory of the renowned Queen Elizabeth."

But it is not proposed to go into the merits of the controversy. The bill, notwithstanding its extreme prolixity, is certainly drawn up with much ability, and makes out a very strong case in favor of the complainants. That the original deed from the Indians, under which the Defendants claimed, did not confer any valid title, would seem to be quite clear; and yet, there were various other matters which entered into the case, and by which it was somewhat complicated. The conduct of Gov-

ernor Carteret himself, who purchased an interest in the Elizabethtown grant, thereby recognizing, as was said, its validity, was a strong point in the Defendants' case. But notwithstanding the immense labor bestowed upon the preparation of this cause, it was never brought to a conclusion in the Court of Chancery. Before a final hearing could be had, the events which ushered in the Revolution, interrupted the progress of the suit, and it was never afterwards revived.

In 1768, the attention of the General Assembly was called to the subject of the Court of Chancery, by a message from Governor Franklin. He stated to them, that controversies frequently arose wherein the Courts of common law could not give relief, and which therefore became the proper objects of a Court of Chancery; that as the disuse of such a Court would probably be attended with mischiefs to the good people which they represented, he had kept it open, though under very great disadvantages to himself; but that no salary was allowed for the necessary officers, and that the fees were not sufficient to make some of them even a moderate recompense for their trouble and attendance. He recommended the matter, therefore, to their serious consideration, and desired them to make such a provision for the necessary officers of the

Court, as would induce persons of knowledge and probity to discharge those important trusts. The House requested the Governor to inform them particularly, what officers of the Court of Chancery it was necessary that they should make provision for; and he thereupon sent them a list of the officers, for which he thought salaries ought to be allowed. They were, a Master of the Rolls, and a Master in Chancery for one division of the Province; two Masters in Chancery for the other division; and a Sergeant at Arms in each division. For the Clerks, Registers, and Examiners, the fees allowed by law were deemed sufficient.

The subject of salaries, however, was one upon which Governor Franklin always had the misfortune to differ from the Assembly; and as he was now pressing upon them the necessity of making further provision for the support of the King's troops in the Province—a point upon which the House were beginning to be sensitive—they showed no disposition to comply with his recommendations as to the Court of Chancery.

* But in 1770, by virtue of the powers and authorities given to him by his commission, and with the advice and consent of the Council, Governor Franklin adopted an Ordinance in reference to the Court of Chancery; by which, after reciting, that

there always had been a Court of Chancery in the Province of New Jersey, and that the same required regulation, it was ordained and declared, that his Excellency William Franklin be constituted and appointed Chancellor and Judge of the High Court of Chancery of New Jersey, and that he be empowered to appoint and commission such Masters, Clerks, Examiners, Registers, and other necessary officers, as should be needful in holding the said Court and doing the business thereof; and also to make such rules, orders, and regulations, for carrying on the business of the said Court, as from time to time should seem necessary.¹

This Ordinance remained in force, until the adoption of the Constitution of July the second, 1776, which provided, that the Governor for the time being, or in his absence the Vice President of the Council, should be the Chancellor; and on the seventh of October following, the Court of Chancery was confirmed and established by the Legislature, with the same powers as those exercised by it before the Declaration of Independence. The offices of Governor and Chancellor continued to be united, until the adoption of our present Constitution, when a separation was made. The conse-

¹ Griffith's Law Reg. IV. 1183.

quence was, that every Governor, from the Revolution to 1844, was a lawyer; and if in one point of view this was objectionable, by confining the office to the members of a single profession, yet on the other hand, it gave to us, during the whole of that period, a succession of Governors, of whom New Jersey may well be proud—a Livingston, a Paterson, a Howell, a Bloomfield, an Ogden, a Pennington, a Williamson, and a Southard, (not to mention the living,) every one of whom shone as a star of the first magnitude.

But to return to the history of the Supreme Court. Upon the death of William Trent, Robert Lettice Hooper was appointed by Governor Burnet Chief Justice, and took his seat upon the Bench at Burlington, on the thirtieth of March, 1725. At the time of his appointment, he was a member of the House of Assembly, and without being much distinguished in any way, seems to have enjoyed in a high degree the respect and confidence of the public. In 1728, after having been Chief Justice for about three years, Thomas Farmar was appointed to succeed him.

Farmar had removed from Staten Island to Amboy, about the year 1711, and was soon afterwards appointed Second Judge of the Supreme Court, in place of Lewis Morris, who, although his name ap-

pears among the Judges of our Supreme Court, never, I believe, took his seat upon the Bench, having soon after his appointment removed to New York, where he was made Chief Justice.

Gordon, in his History of New Jersey, says, that Lewis Morris was at the same time Chief Justice of both colonies, and adduces the fact as evidence, that New Jersey was treated as a mere dependency of New York.¹ This, however, is but one of the many glaring inaccuracies of that work—a work, in which ignorance of facts is equalled only by unskilfulness of narrative. In this instance, his facts and his inferences are alike unfounded. So jealous were the people of New Jersey of their more powerful neighbor, that, as we have seen in the case of Jamison, they were unwilling that their Chief Justice should ever reside in New York; and they complained that James Alexander, the father of Lord Stirling, was a member of the Council here, although he was a large Proprietor of New Jersey, and quite as much interested in this colony as in New York.

Farmar represented for many years the county of Middlesex in the Assembly, and was an active and influential member of that body. At that time,

¹ Gordon's N. J., 97.

there was nothing incompatible in a Judge of the Supreme Court having a seat in the House. He officiated as Chief Justice from March, 1728, until November Term, 1729, when Robert Lettice Hooper was again appointed. Farmar was for some years insane, and was frequently obliged to be kept in close confinement; and this may have been the reason why he was now removed from the Bench.

The eldest son of Thomas Farmar, married the daughter of Captain Christopher Billop, an officer of the British navy, who had succeeded in obtaining a patent for a large tract of land on Staten Island, containing between one and two thousand acres. Young Farmar, upon his wife's inheriting this estate, adopted her father's name, and, as Christopher Billop, became a very noted character during the revolutionary war. He commanded a corps of New York loyalists, and upon one occasion, was taken prisoner by the Whigs, and confined in the jail at Burlington. The late Elias Boudinot, then commissary of prisoners, was constrained to treat him with great severity, in retaliation for the cruel treatment of two Whig officers who had fallen into the hands of the royal troops. Irons were put on his hands and feet, he was chained to the floor of a close room, and fed on bread

and water. His residence on Staten Island was well known as the old Billop House. It was here that Lord Howe met Benjamin Franklin, John Adams, and Edward Rutledge, a Committee of Congress, in the vain hope of adjusting the difficulties between the Colonies and the mother country. After the peace, Billop's estate was confiscated, and he went to the Province of New Brunswick, where he became a member of the House of Assembly, and of the Council, and for many years bore a prominent part in the administration of its affairs. He died at St. John's, in 1827, at the age of ninety.¹

Hooper, after his restoration to the Bench, continued to act as Chief Justice until his death, which occurred in March, 1738. His remains were carried to the city of New York, where they were interred with every mark of respect. He had held the office of Chief Justice, with a short interval, for about fourteen years, and had so conducted himself as to win universal approbation and esteem.

Nothing could exceed the tranquillity, the contentment, and repose, which pervaded the Province during this period. It was the golden age of our Colonial history. The most rapid advancement was

¹ Sabine's *Am. Loyalists*, 160.

making, in all the elements of prosperity and happiness. The voice of faction, and the discords of party, which had so long distracted the Assembly, and perplexed the Courts, were hushed. The administration of justice, flowing tranquilly, as it did, through its accustomed channels, was productive of no events of sufficient importance to claim our attention.

Once only, was this scene of peace and security broken in upon. It was upon the occasion of an insurrection among the slaves, the only instance of the kind recorded in the annals of New Jersey; and I refer to it, as another illustration of the mild and humane spirit, which has ever characterized the administration of our criminal justice. Slaves formed at this time nearly a tenth part of our whole population, being a larger proportion than at any other period of our history. Whether the conspiracy was real or imaginary, no doubt was entertained as to its existence; and yet, notwithstanding the rage and terror which such an event always excites, but a single one of the supposed conspirators was punished. This, says Oldmixon, ill-naturedly enough, was "probably because they could not well spare any more." But, as Grahame observes, "it is happy for slaves, when their masters feel themselves unable to spare them, even to

the cravings of fear and vengeance." And he refers to an insurrection which took place about the same time, in the British colony of Antigua, and which, he observes, "was punished with a barbarity more characteristic of slave owners."¹ Three of the ringleaders were broken on the wheel; seventy-nine were burned alive; and nine were suspended in chains, and starved to death. And it may be added, that a few years afterwards, a "negro plot," as it was called, was thought to have been discovered in the city of New York; and although there is every reason to believe that the whole affair was a delusion, yet fourteen unfortunate wretches were burned at the stake, eighteen hanged, and seventy-one transported; besides which, a poor Catholic priest, of blameless life and of great learning, upon mere suspicion of being an accomplice, was executed, to glut the vengeance of an enraged and infatuated multitude.²

But the mild treatment of slaves in New Jersey, was always the subject of remark.³ Never, in fact, did slavery exist in a more mitigated form. Among the Quakers, and more especially among the Dutch farmers, slaves were generally treated as members of the family; living under the same roof, partak-

¹ Grahame's Col. Hist., II. 105.

² Grahame's Col. Hist., I. 490.

³ Smith's N. Y., 434.

ing of the same fare, and even sitting down at the same table with their masters.

In 1733, during the administration of Governor Crosby, it was provided by an act of Assembly, that no person should be permitted to practise as an attorney at law, but such as had served an apprenticeship of at least seven years with some able attorney licensed to practise, or had pursued the study of the law for at least four years after coming of full age. Before this, no previous term of study had been required as a qualification for admission to the bar ; and the consequence was, that many persons of mean parts and slender attainments had found their way into the profession. Under the wise and wholesome provisions of this act, however, we shall soon find the Courts of New Jersey adorned by men, who were lawyers indeed.

In 1734, and while Hooper was Chief Justice, Daniel Coxe was appointed an Associate Justice of the Supreme Court. He was the son of Dr. Daniel Coxe of London, the great Proprietor of West Jersey, and Governor of that Province for some years.¹ We have seen that he was a member of

¹ Dr. Daniel Coxe, according to Smith, owned twenty-two shares of Propriety. He was Governor of West Jersey from 1687 to 1690, and appointed Edward Hunloke his deputy. In 1691, he conveyed the Government of West Jersey and territories to a company of Proprietaries, called the

Lord Cornbury's Council, and Speaker of the House of Assembly during the administration of Governor Hunter. He was a man of an enterprising character, and of great activity of mind, and his name is entitled to a place in our Colonial history, which it has not hitherto received.

In 1630, a patent had been obtained by Sir Robert Heath, Attorney General to Charles the First, of that extensive region of country then called Carolina. In 1663, however, this patent was declared to be void, the purposes for which it was given never having been carried out; and a new grant of it was made by Charles the Second to some of his rapacious courtiers. But towards the close of the seventeenth century, Dr. Coxe—who speculated largely in North American proprietary rights—contrived among other acquisitions, to procure an assignment of this old patent, which he contended was a valid and subsisting one.¹ In 1699, he addressed a memorial to King William, reciting the original patent, and setting forth his pretensions to the Province embraced within it.² This memorial was referred to the Attorney Gene-

West Jersey Society, for the sum of nine thousand pounds sterling.—*Smitk's N. J.*, 190, 207.

¹ *Grahame's Col. Hist.*, I. 343. Note.

² For an abstract of this memorial see *Coxe's Carolana*, p. 114.

ral, who, after perusing the letters patent and conveyances produced by Dr. Coxe, reported in favor of the validity of his title.

After his death, his son, Daniel Coxe, of whom we are now speaking, revived his father's claim, and made various unsuccessful efforts to colonize the country embraced in it, and which he called *Carolana*, the name given to it in the original patent. In the prosecution of this purpose he wrote a treatise, which was published in 1722,¹ and which deserves more than a passing notice. It was entitled, "A description of the English Province of Carolana, by the Spaniards called Florida, and by the French La Louisiane." The question as to his title has long since lost its interest; and his description of the Province only shows how little was then known of the geography of our country;² but

¹ Grahame says it was published in the year 1741. But this was a republication made after the death of Daniel Coxe. It was originally published in 1722, many years before his death.

² The fifth chapter of the work unfolds "a new and curious discovery," of an easy communication betwixt the River Mississippi and the South Sea, which separates America from China, by means of several large rivers and lakes. This easy communication was *by water, with the exception of "about half a day's land*

carriage." The River Mississippi, through one of its branches, is shown to be navigable to its heads or springs, which proceed from a *ridge of hills*, somewhat north of New Mexico, passable by horse, foot, or wagon, in less than half a day; and on the other side of this ridge, are said to be navigable rivers, which run into a great lake, that empties itself by another navigable river into the South Sea. This ridge of hills, passable by horse, foot, or wagon, in less than half a day, was of course the Rocky Mountains.—Coxe's *Carolana*, p. 62.

his préface to the work contains suggestions which, as they connect themselves with the formation of our American Union, cannot even now be deemed unimportant.

He proposed, for the more effectual defence of the British settlements against the hostile incursions of the French and Indians, that all the North American Colonies should be united under a legal, regular, and firm establishment; over which, a Lieutenant, or Supreme Governor, should be appointed to preside, and to whom the Governors of each Colony were to be subordinate. He further proposed, that two deputies should be annually elected by the Council and Assembly of each Province, who were to form a Great Council, or General Convention of the Estates of the Colonies; they were to be convened by the Governor General, to consult and advise for the general good of all the Colonies, and to settle and appoint the respective quotas or proportions of men and money to be raised by each, for their mutual defence and safety, as well as for offence and invasion of their enemies in case of necessity; the Governor General to have a negative upon the acts and proceedings of the Great Council, but not to enact any thing without their consent. It was further provided, that the quota or proportion allotted to each

Colony, might nevertheless be levied and raised by its own Assembly, in such manner as they should judge most easy and convenient, and the circumstances of their affairs would permit.¹

"In this plan," says Grahame, "which is developed at considerable length, and supported with great force of argument, we behold the germ of that more celebrated, though less original project, which was again ineffectually recommended by an American statesman in the year 1754; and which, not many years after, was actually embraced by his countrymen, and rendered instrumental to the achievement of their independence."² It was in fact the very plan, which was recommended by Dr. Franklin to the Convention, which assembled at Albany, in 1754, for the purpose of forming a league with the Six Nations, and concerting measures for united operations against the encroachments of

¹ "Let us consider," he says, "the fall of our ancestors, and grow wise by their misfortunes. If the ancient Britains had been united amongst themselves, the Romans, in all probability, had never become their masters: for as Cæsar observed of them, *dum singuli pugnabant, universi vincabantur*, whilst they fought in separate bodies, the whole island was subdued. So, if the English Colonies in America were consolidated as one body, and joined in one common

interest, as they are under one gracious sovereign, and with united forces were ready and willing to act in concert, and assist each other, they would be better enabled to provide for and defend themselves against any troublesome ambitious neighbor or bold invader. For Union and Concord increase and establish strength and power, whilst Division and Discord have the contrary effect."—*Coxe's Carolina, Preface.*

² Grahame's Col. His., II. 199.

the French. This plan of Dr. Franklin's has been much talked of, as "the Albany Plan of Union," figures largely in all our histories, and is thought to have been one of those grand and original conceptions for which he was so famous. And yet, it was little more than a transcript of the design sketched by Daniel Coxe many years before, and which would seem to have originated with him. To him, therefore, a citizen of New Jersey, and one of the Judges of our Supreme Court, belongs the credit of it, and the truth of history requires that from him it should no longer be withheld. The name of Franklin is encircled with such a glorious plumage of its own, that it can well afford to have this single borrowed feather plucked from it.

Daniel Coxe remained upon the Bench of the Supreme Court until his death, which took place at Trenton in the spring of 1739. His early career in New Jersey was clouded, by his connexion with Lord Cornbury, and his differences with Governor Hunter; but he lived to enjoy the confidence and respect of the community; and his judicial duties appear to have been discharged with ability and integrity.

The next Chief Justice of the Supreme Court was Robert Hunter Morris. His commission bears date on the seventeenth of March, 1738, and a few

days afterwards he took his seat upon the Bench. He was the son of Lewis Morris, of whom we have had occasion more than once to speak, a man who for more than half a century filled a most conspicuous place in the annals both of New Jersey and New York.

Having the misfortune when an infant to lose both his parents, Lewis Morris was adopted by an uncle, who took care of him until he came to man's estate. His early years were wild and erratic. In one of his youthful freaks, he strolled away to Virginia, and from there to the Island of Jamaica, "where, to support himself, he set up for a scrivener." After some years spent in this "vagabond life," he returned to his uncle, by whom he was kindly received, and who, dying soon after, left him heir to his fortune.¹ He began his public career in New Jersey, where he became a Judge of the Court of Common Right under the Proprietary Government, and after the Surrender, a member of the Council, and a popular leader of the Assembly. Upon receiving the appointment of Chief Justice of the Supreme Court of New York, he removed to that Province, and for many years took a leading part in its affairs; and now, after a long

¹ Smith's N. Y., 202.

absence, he returned to New Jersey, not to spend in quietness and peace the remnant of a life which was drawing to a close, but to enter upon a new and troubled scene of action. He brought with him a commission as Governor of New Jersey alone, this Province being now, for the first time since the Surrender, allowed to have a separate Governor from New York.

But it is impossible for me, within the limits which I have prescribed to myself, to do justice to the character of either the Governor or the Chief Justice. Ample materials exist for a life of both father and son, and it is to be hoped that they will ere long be collected, and embodied in some suitable form. Interesting and valuable would their biographies be. Their history would in fact be the history of New Jersey for the first century of its existence. Lewis Morris, in his youth, must have been the companion of the first settlers of the Colony, and Robert Hunter Morris, in his old age, of the chief actors in the Revolution. Lewis Morris was one of the earliest Judges of the Court of Common Right, and Robert Hunter Morris one of the latest Chief Justices of the Supreme Colonial Court. Their career, too, was so chequered, and their features so strongly marked, that they present a most tempting theme for discussion. But it is

one in which I cannot now indulge. I can only glance at a few of the more striking incidents of their life, and the more prominent traits of their character.

Lewis Morris, notwithstanding his eccentricities, was a man of strong natural parts, which were much improved by commerce with the world, and the society of men of sense and knowledge, of which he was passionately fond. But he was at the same time a man of strong passions, which were not always under his control, and of an ardent, restless, and aspiring disposition. In his youth he was a flaming patriot, and stood up manfully for the rights of the people; but when in power himself, no one was a fiercer stickler for prerogative. He was indolent in the management of his private affairs, but always busy about public matters. He had considerable knowledge of the law, but was much more deeply versed in the arts of intrigue. In short, he was neither a profound lawyer, nor an enlightend statesman, but a mere politician, and his vices were the vices which belong to that class of men. But he was not deficient in generous or manly qualities, nor incapable of appreciating them in others. An inordinate love of money was not one of his faults. The fortune which he left behind him, he had inherited from his

uncle. He was a kind husband, and an affectionate parent.¹

He was nearly seventy years old, when he was appointed Governor of New Jersey; but age had not impaired the vigor of his faculties, nor cooled the ardor of his passions, nor extinguished his fondness for disputation. He was received by the people and the Assembly with open arms. They remembered, with gratitude, the services which in times past he had rendered to the Colony, and the boldness and eloquence with which he had vindicated their rights, against the tyrannical encroachments of Cornbury. The first messages which passed between him and the House, breathed nothing but mutual congratulation and confidence. They expressed their deep sensibility of their sovereign's paternal care over them, in giving them a Governor so exactly adapted to their wants and circumstances; a person so distinguished for his profound knowledge of the law, and so eminent for his skill in the affairs of government; one, in short, who from his learning and ability, and from his acquaintance with the nature and Constitution of the Province, was every way qualified to render them a happy and flourishing people. But the

¹ Smith's N. J., p. 498.

scene soon changed. In his very next message to the House, he read them a long political lecture, in which he assumed an arrogant and overbearing tone, and concluded with a solemn, not to say irreverent warning, that they should *now in this their day, follow the things that made for their peace, before they were hid from their eyes.* This the Assembly did not much relish; and evincing no disposition to be dragooned into submission, they were soon after dissolved. A new Assembly fared no better, and from that time until his death, there was one uninterrupted scene of contention and strife. The Governor prided himself upon his great skill and experience in political matters; he could not brook the slightest opposition to his views, even in the smallest particular; and he was passionately fond of argumentation. With such a temper of mind, and constantly brought into contact with an Assembly, the members of which were quite as unyielding in their opinions as he was, and who were besides always ready to run a tilt with a royal Governor, it was not to be wondered at, that a continual series of explosions should take place.

There is some reason, however, for believing, that in his personal intercourse with the members of the Assembly, there was much to soften and relieve the harshness and severity of their public pro-

ceedings. A little incident related by Smith, furnishes some evidence of this. During one of the long and tedious sessions, when business had been for some time at a stand, the Governor, meeting one day in the street with Joseph Cooper, a representative from the county of Gloucester, said to him in a pleasant way, "Cooper, I wish you would go home and send your wife in your place." Cooper replied, that he would willingly do so upon one condition, and that was, that the Governor would also resign in favor of his wife. Nor was this a pointless jest. For the Governor's lady—whom he had married in early life, and with whom he had lived most happily for many years—was really a most sensible and accomplished woman, and there is little doubt, that if she could have been permitted to hold the reins of government in her own hands, she would have managed the troublesome Assemblies much better than her husband did.

Governor Morris died on the twenty-first of May, 1746, at his place, called Kingsbury, near Trenton. He had twelve children, the two eldest of which were Lewis and Robert Hunter. Lewis was the father of Lewis Morris, one of the signers of the Declaration of Independence, and of the still more celebrated Gouverneur Morris, whose life has been written by Mr. Sparks.

Robert Hunter Morris held the office of Chief Justice of New Jersey for six-and-twenty years, although, as we shall see, he did not confine himself very closely to the Bench. Of all the Chief Justices of our Supreme Court, prior to the Revolution, he was by far the most accomplished. Along with much of his father's genius, he inherited some of his peculiarities, the most prominent of which was his love of disputation, a propensity not likely to be checked by the profession which he embraced. He was brought up under the care of an excellent mother, and enjoyed all the advantages of a liberal education. He had strong natural powers, great quickness of apprehension, and a most retentive memory. Although born to the possession of fortune, yet this did not—as it too often does—repress the energies of his mind, or abate his thirst for knowledge. In the gifts of person, nature had been as bountiful to him, as in those of intellect and fortune. He was comely in his appearance, graceful in his manners, and of a most imposing presence. He had a smooth flow of words, and was distinguished, beyond most men of his time, by his powers of conversation.

With these advantages natural and acquired, it is not to be wondered at, that he should have risen rapidly to distinction. He soon became a member

of Council, and at an early age, was appointed Chief Justice of the Supreme Court. It is in this capacity, that we are chiefly to consider him; and while there are no records of his judicial opinions, yet he left behind him the reputation of having been a learned and upright Judge. "He came young," says Smith, "into the office of Chief Justice, stuck to punctuality in the forms of the Courts, reduced the pleadings to precision and method, and possessed the great qualities of his office, knowledge and integrity, in more perfection than had often been known in the colonies."

Had no other office engrossed his attention—whatever might have been said of his private irregularities—his public character had been without a shade. But it is not surprising, that the reputation of a country lawyer, and a provincial judge, should not have been sufficient to fill the measure of his ambition. He soon began to look abroad for distinction. In 1749, he visited England. A plan was believed to be in contemplation, for the purpose of placing New Jersey and New York again under the same Governor. Perhaps it was thought, that the experiment of having a separate Governor for New Jersey had not worked well; and that the more the people of New Jersey saw of their Governors, the less they were apt to like them. It was

to protest against any such design, and to prevent the consummation of it, that the Chief Justice—at the request of the Council, of which he was a member—went to England. This at least, was the ostensible object of his visit. Doubtless, he had other ends in view, of a more private and personal nature. He remained abroad for several years. He was treated in England with much respect and consideration. With his talents and accomplishments, the graces of his manner, and his powers of conversation, he was fitted to shine in any society.

But it was not pleasure alone that he was in pursuit of. He was ambitious of political distinction, and courted office. It was proposed to make him Lieutenant Governor of New York; and among the papers of the Society, there is the copy of a letter from him to Lord Lincoln, in which he urges, that the appointment should be hastened, if it was intended to confer it upon him. For some reason or other, however, this appointment was not made. But a higher honor awaited him. He was a friend of John and Thomas Penn, the Proprietaries of Pennsylvania, and saw much of them while in England. Hamilton, the Governor of that Province—worn out by the incessant disputes with the Assembly, to which his adherence to proprietary instructions subjected him—

declared, that he would serve no longer, and insisted that a successor should be at once appointed. The office was thereupon tendered to Mr. Morris, and he undertook the perilous task of attempting to wield that "fierce democracy."

In 1754, after an absence of five years, he returned, bearing the commission of Governor of Pennsylvania. Soon after his arrival, he met in New York with Benjamin Franklin, a member of the Assembly of Pennsylvania, then on his way to Boston. The interview which took place between them was so characteristic, that I will give it in the words of Franklin himself.

After giving an account of his meeting in New York with Mr. Morris, who had just arrived from England with a commission to supersede Mr. Hamilton, he says:—"Mr. Morris asked me if I thought he must expect as uncomfortable an administration. I said no; you may, on the contrary, have a very comfortable one, if you will only take care not to enter into any dispute with the Assembly." "My dear friend," said he, pleasantly, "how can you advise my avoiding disputes? you know I love disputing; it is one of my greatest pleasures; however, to show the regard I have for your counsel, I promise you I will, if possible, avoid them." And Franklin adds:—"He had some reason for loving

to dispute, being eloquent, an acute sophister, and therefore generally successful in argumentative conversation. He had been brought up to it from a boy, his father, as I have heard, accustoming his children to dispute with one another for his diversion, while sitting at table after dinner; but I think the practice was not wise; for, in the course of my observation, those disputing, contradicting, and confuting people are generally unfortunate in their affairs. They get victory sometimes, but they never get good-will, which would be of more use to them. We parted, he going to Philadelphia, and I to Boston. In returning, I met at New York with the votes of the Assembly of Pennsylvania, by which it appeared that, notwithstanding his promise to me, he and the House were already in high contention; and it was a continual battle between them as long as he retained the Government. I had my share of it; for as soon as I got back to my seat in the Assembly, I was put on every committee for answering his speeches and messages, and by the committees always desired to make the draughts. Our answers, as well as his messages, were often tart, and sometimes indecently abusive; and as he knew I wrote for the Assembly, one might have imagined that, when we met, we could hardly avoid cutting throats. But he was so good-

natured a man, that no personal difference between him and me was occasioned by the contest, and we often dined together."

Here was in fact repeated, upon a new theatre, and with some additional parts, the very same scenes, which, not many years before, had been enacted by his father and the Assembly of New Jersey. Well had he learned the lessons which his father had given him in the art of disputation. In one respect, however, he was more unfortunate than his father; for in this war of words, he was destined to encounter in the person of Franklin, a foeman, whose blade was as keen as his own, and who was quite as much a master of the art of fence.

Upon his receiving the appointment of Governor of Pennsylvania, he tendered his resignation as Chief Justice, in a letter addressed to the Lords of Trade, a draft of which, bearing date on the twenty-ninth of March, 1754, is among the Rutherford Collection of Papers. I am indebted to Mr. Whitehead for some interesting extracts from this letter, containing a variety of suggestions touching appointments to office in New Jersey. He dwells upon the importance of filling the office of Attorney General with a man of character and abilities—one, "whose knowledge and standing in the law,

may render him respected by the Courts, and enable him to act up to the duties of his office." He recommends for that station David Ogden, as a man of character and fortune, of more than twenty years' standing at the Bar, among the first in the profession, and firmly attached to the Government. He names as his successor in the office of Chief Justice, Richard Saltar; "a man," he says, "of understanding and fortune, a firm friend to the Government, and will act in that station with honor to himself, and justice to the public." He did not think Samuel Nevill would do; "his circumstances," he observes, "are so low, and he is, from that reason, unfit to be trusted in the principal seat of justice." It is very evident, that Mr. Morris esteemed the possession of wealth an indispensable requisite for high office.

However, the resignation of the Chief Justice was not accepted, and he held the office the whole time he was Governor of Pennsylvania. But the Bench of the Supreme Court was, in the meanwhile, ably filled, by Nevill and Saltar, the associate Justices.

In 1756, Mr. Morris relinquished his situation as Governor of Pennsylvania, and resumed his duties as Chief Justice. But the next year, 1757, we find him making another visit to England, and dur-

ing his absence, William Aynsley was appointed Chief Justice of the Supreme Court. As Mr. Morris held his commission during good behavior, it is not known upon what ground a vacancy was thought to exist. The appointment of Aynsley may perhaps be accounted for, by the peculiar circumstances attending the Government of the Province at that time. Upon the death of Governor Belcher—which took place on the thirty-first of August, 1757—the administration, of right, devolved upon John Reading, the first named of the Councillors. His age and infirmities, however, were such, that he at first refused to act, and it was with the utmost reluctance that he was at last prevailed upon to assume the duties. For more than a month, the Government was administered by the whole Council. It was not until the thirteenth of June, 1758, that Governor Bernard arrived. It was during this *interregnum*, if it may be so called, that Aynsley was appointed. He took his seat upon the Bench in March, 1758, and acted as Chief Justice during that and the following term. But he did not long survive his appointment: he died in the latter part of 1758, or early in 1759.

Shortly after the death of Aynsley, it was announced, that one Nathaniel Jones had been appointed Chief Justice of New Jersey; that he had

kissed the hands of his sovereign George the Third; and was about to sail for America to enter upon the duties of his office. Who this gentleman was, I have not been able to ascertain; but, in all probability, he was some briefless barrister of London, who had contrived in some way to make himself useful to the Government, and who was to be rewarded by the Chief-Justiceship of New Jersey. He arrived at New York, on the twelfth of November, 1759, and at once proceeded to Amboy, where he received his commission from Governor Bernard. Being thus invested with his new dignity, he made a visit to Elizabethtown, where he was received with much ceremony. A public entertainment was given to him, and the Mayor and civil authorities presented an address, congratulating him upon his safe arrival in the Colony. To this he returned a flattering response, promising himself much happiness from a residence among so "humane and religious a people," and pledging himself to a faithful performance of the duties of his office.

At the next term of the Supreme Court, which was held in March, 1760, he appeared, produced his commission, and prayed that the oath of office might be administered to him. But here an unexpected difficulty arose. The seat of the Chief Jus-

tice was already occupied. Robert Hunter Morris was again upon the Bench, claiming to be still the Chief Justice of New Jersey. Judge Nevill was by his side. It was altogether an awkward business, a very embarrassing affair. On the one hand, Mr. Jones had his commission read, by which he was appointed Chief Justice in the room of William Aynsley deceased. He also referred to a number of entries in the minutes of the Court, from which it appeared, that at the Term of March, 1758, the commission of Aynsley as Chief Justice had been openly read, and that he had actually sat upon the Bench during that and the following Term. This was certainly a very strong case for Mr. Jones. But on the other hand, Mr. Morris produced *his* commission, bearing date on the seventeenth day of March, 1738, appointing him to the office of Chief Justice, in place of Robert Lettice Hooper, to hold and enjoy the same *during good behavior*.

In this dilemma, it became necessary for the Court to decide. Mr. Morris of course took no part in the decision, and the opinion of the Court was pronounced by Mr. Justice Nevill. It was to this effect; that, inasmuch as the commission of Mr. Morris conferred upon him a freehold in the office of Chief Justice of the Province of New Jersey, and nothing had been shown to divest him

thereof, the Court could not administer the oath of office to Mr. Jones, or admit him to enter upon the execution of the duties of Chief Justice ; but would leave his right, if he had any, to be determined by a due course of law. Mr. Morris at the same time stated, from the Bench, that David Ogden and Charles Read would appear for him, and defend any suit that might be brought against him, touching his right to the office.¹ Thus ended for the time this notable controversy ; nor does it appear ever to have been revived. Mr. Jones quietly put his commission in his pocket, and returned whence he came, not finding his hopes of "happiness" likely to be realized in this New World, and probably concluding, that the people of New Jersey were not quite so "humane and religious," as he had taken them to be.

Mr. Morris continued to occupy, without interruption, the seat of Chief Justice until his death. He was too important a man in the Colony, and too good a friend to the Government, to be discarded. The appointment of Jones had been in all probability made, under some misapprehension, or from a belief that Mr. Morris had no wish to return to the Bench.

¹ Minutes of Supreme Court.

But we must hasten to the close of the Chief Justice's career. It was a sudden and a melancholy one. On the morning of the twenty-seventh of January, 1764, he left Morrisiana, in fine health and spirits, on a visit to Shrewsbury, where he had a cousin residing, the wife of the clergyman of the parish. In the evening, there was a dance in the village, and all the respectable families of the neighborhood were assembled. The Chief Justice made one of the gay throng, and entered heartily, as was his wont, into the festivities of the occasion. He led out the parson's wife, opened the ball, danced down six couple, and then—without a word, or a groan, or a sigh—fell dead upon the floor.

Such is the sad story of his end, given in a letter from William Smith, the Provincial historian of New York, to his friend Horatio Gates, which is preserved in the library of the New York Historical Society. And he adds, "Unhappy Jersey has lost her best ornament."

Samuel Nevill, was second Judge of the Supreme Court, while Morris was the Chief Justice. He was a son of John Nevill, of Stafford in England; had received a liberal education; and previous to his coming to America, had been editor of the London Morning Post. His sister was the

second wife of Peter Sonmans—of whom we have already spoken—and who dying in March, 1734, left the whole of his estate—including his large proprietary interests in New Jersey—to his widow. She died in the month of December, of the following year, intestate, and Samuel Nevill, being her eldest brother, inherited the property. He at once embarked for New Jersey, to look after the estate, to which he had thus fallen heir; and arriving here in May, 1736, took up his residence at Amboy. He soon rose to eminence, and became a man of much influence in the Colony. He was for many years a member of the Assembly, and during the greater part of the time, Speaker of the House. He was the strenuous supporter of the rights of the Proprietors of East Jersey, in their difficulties with the Elizabethtown and Newark rioters, and some of the speeches which he delivered upon the occasion in the Assembly, were published in connexion with the Bill in Chancery, and have thus been preserved. He was also the principal champion of the Assembly, in their long contests with Governor Morris, and penned some of those caustic addresses in reply to the speeches of his Excellency. This may perhaps account for the disparaging terms in which he is spoken of by Robert Hunter Morris, in his letter to the Lords of Trade,

before referred to. In 1748, he was appointed a Judge of the Supreme Court, and for a period of sixteen years, continued to discharge the duties of that office with great fidelity. While upon the Bench, he published, under the direction of the General Assembly, an edition of the laws of the Province, in two volumes; containing all the acts of Assembly from the Surrender, in 1702, to the first of George the First, 1761. The first volume was published in 1752, and the second in 1761.

Judge Nevill was not only a man of ability, but of considerable literary pretensions. In January, 1758, appeared the first number of "The New American Magazine." It was printed by James Parker, published at Woodbridge, in the county of Middlesex, and edited by the Hon. Samuel Nevill, under the cognomen of *Sylvanus Americanus*. It was the first periodical of any description that was published in New Jersey, and the second magazine of the kind on the continent. It continued to make its appearance regularly until March, 1760, when it was discontinued for want of patronage. Altogether it was a very creditable publication.¹

Upon the death of Mr. Morris, Judge Nevill

¹ Barber and Howe's N. J. Hist. Col., 44.

would probably have been appointed Chief Justice, had not his advanced age, and growing infirmities, in a great measure disqualified him. He died, in fact, but a few months after the Chief Justice, in the sixty-seventh year of his age, leaving behind him a name, unsullied by the slightest stain, and which deserves to be held in grateful remembrance.

Charles Read was appointed to succeed Robert Hunter Morris as Chief Justice. His commission is dated on the twentieth of February, 1764, and at the March Term following, he took his seat upon the Bench. William Smyth, in his letter to Horatio Gates, speaks of this appointment as an objectionable one, and after commenting upon it at some length, exclaims; "Franklin after Boone—after Morris, Read! Patience, kind heavens!" On the other hand, Lord Stirling addressed a letter to Governor Franklin, shortly after the death of Mr. Morris, in which he recommends Charles Read as a very suitable person to fill the office of Chief Justice.¹ He officiated as Chief Justice, however, but a few months. Whether the appointment gave dissatisfaction, or was designed only as a temporary one, the fact is, he was soon displaced, and consented again to take the place of second Judge,

¹ Duer's Life of Lord Stirling, 80.

which he had held for some time before Mr. Morris's death.

The last Chief Justice of the Colony of New Jersey was Frederick Smyth. He was appointed on the seventeenth of October, 1764, and continued in office until the adoption of the Constitution of 1776. I need not say, that this was a most eventful period in the history of the Colonies. The Stamp Act was passed soon after his elevation to the Bench, and the Declaration of Independence was adopted a few days after his retirement from it.

New Jersey shared with her sister Colonies, in the indignation and alarm which was occasioned by the passage of the Stamp Act, and nowhere did it encounter a more vigorous, though peaceful resistance. The lawyers of New Jersey were the first to adopt measures for a systematic opposition to the use of stamps. At the September Term of the Supreme Court, 1765, a meeting of the Bar was held at Amboy, for the purpose of considering what steps it would be proper to pursue upon the arrival of the stamps, which were then shortly expected. There was a full and general attendance, and after a free interchange of sentiment, it was unanimously resolved, that they would not consent to make use of the stamps, under any circum-

stances, or for any purposes whatever. The effect of such a resolution, was to put an entire stop to the transaction of all legal business, and thus render the odious act wholly unproductive as a source of revenue. It was the most efficient measure, therefore, that could have been adopted, and the more creditable to them, inasmuch as they were likely to be the principal sufferers by it. Their wise and patriotic example was much applauded at the time, and was soon followed in other Colonies; but, like every thing else of interest and importance connected with New Jersey, it hardly receives a passing notice on the page of American history. The truth is, Massachusetts and Virginia seem to have monopolized, in a great measure, all the glory of the Revolution.

On the twentieth of September, the day after this meeting, Chief Justice Smyth desired the members of the Bar to attend him in a body, that he might lay before them some matters for their consideration. A report had been in circulation, that he had solicited the appointment of distributor of stamps. This he denied upon his honor. After setting himself right upon that point, he proceeded to propose to them certain questions, to which he desired a separate answer from each.

The first was ;—"Whether if the stamps should

arrive, and be placed at the city of Burlington, by or after the first of November, they would, as practitioners, agree to purchase them for their necessary legal proceedings?" To this they answered, "that they would not, but rather suffer their private interests to give way to the public good, protesting against all riotous proceedings."

The next question was;—"Whether in their opinion, the duties could possibly be paid in gold and silver?" They answered, "that they could not be paid in gold and silver, even for one year."

The last question was;—"Whether, as the act required the Governor and Chief Justice to superintend the distribution of stamps, he would be obliged to accept the appointment of distributor, in case the Governor should fix upon him for that office?" Their answer was, "that the Governor was not empowered by the act to appoint; that if he was, it was left to the option of the Chief Justice whether to accept or not; and that it would be incompatible with his office as Chief Justice."

The Chief Justice seems to have been entirely satisfied with these answers, and to have acted upon the advice thus given him. In fact, before the arrival of the day on which the act was to take effect, every distributor of stamps in America had resigned. The effect of these proceedings was to

produce a complete cessation of all legal business. The stamps arrived, but no one would purchase them. The Courts of justice were shut up.

But this state of things could not last long. The people were becoming impatient of its continuance, and tired of mere passive resistance. Associations had sprung up in nearly all the Colonies, under the title of "The Sons of Liberty," who were in favor of setting the provisions of the act at open defiance. Efforts were made to induce the lawyers of New Jersey to transact business without the use of stamps. Another meeting of the Bar was proposed. Heretofore, all had been done in perfect harmony. There had not been a single dissenting voice. But now, the line began for the first time to be drawn, between those who thought they had gone far enough, and those who were willing to go farther. We have a letter from David Ogden, to Philip Kearney, in which he declares himself opposed to another meeting of the Bar, and expresses the hope, that they would continue to pursue the peaceful method they had adopted, until the Stamp Act was repealed.

The meeting, nevertheless, took place. It was held at New Brunswick, on the thirteenth of February, 1766. The Sons of Liberty, to the number of several hundred, took care to be present at the

same time, and united in a written request to the members of the Bar, urging them to proceed to business as usual without stamps, and to use their influence to have the Courts of justice opened. The meeting, while they agreed to preserve that happy state of peace and tranquillity which had thus far been maintained in the Province, at the same time resolved, that if the Stamp Act was not repealed by the first day of April following, they would resume their practice as usual; and they appointed a Committee of two, to wait upon the Sons of Liberty, and assure them, that if the act was not suspended or repealed, they would join them in opposing it with their lives and fortunes.

These were bold and spirited resolutions. Even in Massachusetts—generally in advance of the other Colonies—the most patriotic of the lawyers deemed it impossible to conduct judicial business, in open disregard of an act of Parliament, however unjust and tyrannical it might be; and nothing but a resolution of the Assembly emboldened them to venture upon such a step.¹ And in Philadelphia, at a numerous meeting of the members of the Bar, held a short time before the Stamp Act was to go into operation, upon the question being submitted,

¹ Grahame's Col. Hist., II. 405.

whether they should intermit all business, or carry it on without stamps and set the act at defiance, only three individuals were found, who were willing to risk the consequences of going on without stamps. John Dickinson strenuously opposed the adoption of the measure, upon the ground, that the Colonies were bound by all acts of Parliament.¹ Before the arrival of the day, however, named in the resolutions of the Bar of New Jersey, the Stamp Act was repealed, and all further proceedings upon their part became unnecessary.

In 1769 and 70, and while Chief Justice Smyth was on the Bench, the most serious complaints were made against the lawyers of New Jersey, followed, I regret to say, in some instances, by tumults and riots of the most disgraceful character. For many years, complaints had been made, from time to time, of the abuses practised by attorneys, of the multitude of lawsuits, and the expenses of judicial proceedings. During Governor Morris's administration, repeated efforts were made by the Assembly to correct these evils, so far as they were thought to have any real existence; but the measures which they adopted for that purpose, were not so fortunate as to meet with the approbation

¹ Sanderson's Biography of the Signers, II. 312.

of the Governor and Council. In Governor Franklin's time, these complaints grew louder, and became more frequent, until, in 1769, so many memorials were presented to the Assembly upon the subject, and in language so strong, as to indicate a very wide-spread excitement. A pecuniary crisis had arrived in the Colony, not unlike one of those periods of financial embarrassment, through which we have since occasionally passed. Money was scarce, prices were low, business in all its branches depressed, and property of all kinds greatly depreciated. Creditors grew clamorous, debtors were unable to pay, prosecutions were set on foot, and judgments and executions followed as of course. The people—as is not unusual in such cases—looking round for the causes of their sufferings, and not taking the trouble to search very far for them—asccribed them all to the lawyers. It never seems to have occurred to them, that the multiplicity of lawsuits—which was the principal topic of complaint—might have been the effect, rather than the cause, of the universal decay of trade, and the entire prostration of the business of the country.

However, the excitement was not the less violent, because it was unreasonable. The table of the Assembly groaned beneath the weight of petitions which were daily presented, praying for relief, and

invoking vengeance on the heads of the attorneys. It was almost impossible for the House not to catch the contagion. Individual members of the profession were pointed out by name, and charges preferred against them. Among others, Mr. Bernardus Legrange was accused of having taken exorbitant fees in certain suits brought by him, and was ordered to answer at the bar of the House. He appeared, and delivered a written defence, and offered in evidence a number of affidavits. But the Assembly—not unwilling perhaps to find a victim, with which to appease the popular fury—resolved, that the charges had been sustained, and ordered their Speaker to reprimand him at the bar of the House—which was accordingly done. The ground upon which he appears to have been convicted was, that the Chief Justice, and his associate on the Bench, had certified to the House, that the fees complained of were unnecessary in the prosecution of the suits, and not warranted by law. But it turned out that the Judges had been entirely mistaken, and Mr. Lagrange had the satisfaction, a short time afterwards, of laying before the Assembly, certificates of the Chief Justice, and his associate, Charles Read, stating, that upon further examination, they had found the bills of costs in question fully warranted by the practice of the oldest

and most respectable practitioners in the Province, and that in fact they were lower than were generally taxed in like cases. These certificates the House ordered to be entered on their minutes, and thus Mr. Lagrange stood wholly exonerated.

Similar charges were made against Samuel Allinson; but he also produced certificates—signed by the Justices of the Supreme Court, and three of the most distinguished members of the Bar, Richard Stockton, James Kinsey, and John Lawrence,¹ setting forth, that they had carefully inspected the bills of costs complained of, and found them to be in every particular correct. With these the House were satisfied, and he was accordingly acquitted.

But the members of the New Jersey Bar—jealous as they have always been of their honor—were not disposed to sit down quietly, while the whole Province was ringing with the most exaggerated charges against them. A memorial was therefore presented to the House, by James Kinsey and Samuel Allinson, on behalf of themselves and others, practitioners of law in the Province, referring to the petitions presented and the accusations made against them, and praying leave to be heard before the House, not only to answer the charges of the

¹ John Lawrence resided in the of the gallant Captain James Lawrence of Burlington, and was the father of the navy.

petitioners, but also to show whence the oppressions of the people really proceeded. The House readily acceded to the prayer of the memorialists, and on the twenty-fifth of October, 1769, James Kinsey and Samuel Allinson appeared at the bar of the Assembly, to plead the cause of the lawyers of New Jersey. Nor did they stand alone; but associated with them was one, who although not of many years standing at the Bar, had already reached the foremost rank in his profession; and whose subsequent career in another field of action was so full of honor and glory. I allude to Joseph Reed, a native of New Jersey, and then a lawyer in full practice at Trenton; but who afterwards became Adjutant General of the continental army, a member of Congress, and President of the Executive Council of Pennsylvania; the man, who when offered the sum of ten thousand pounds sterling, and the best office in the gift of the crown in America, if he would bring about a reunion between the two countries, made that memorable reply which has immortalized him;—*I am not worth purchasing, but such as I am, the King of Great Britain is not rich enough to buy me.*¹ No report of their argument

¹ Joseph Reed was born at Trenton New Jersey, in 1757. He read law under the care of Richard Stockton, and was educated at Princeton, where he took his Bachelor's degree in the College of New Jersey in May, 1763. He

has been preserved, but from the character of the advocates, we may well presume that it was an effort worthy of the occasion, and that they triumphantly vindicated the profession from the aspersions which had been cast upon it.

There was one member of the Assembly, who seems to have taken a very active part in fomenting the complaints against the lawyers. This was Samuel Tucker, who in 1776, although President of the Convention which framed the Constitution of the State, and Chairman of the Committee of Safety, yet took a protection from the British, and renounced allegiance to his country. Now it so happened, that Samuel Tucker had been Sheriff of the county of Hunterdon; and as he was so ready to charge the attorneys with having taken illegal fees, they had the curiosity to look into some of his bills as Sheriff, to ascertain how far he had a right to stand up as the accuser of others. The result of their researches was, the discovery, that Mr. Tucker, while Sheriff, had upon several occasions,

then went to England, to complete his professional education, and remained a student in the Middle Temple for two years. In 1765, he returned to America, and commenced the practice of the law in his native place. He pursued his profession in New Jersey until 1770, when he again went to England, and upon his

return removed to Philadelphia. His subsequent career is known to all. He died in 1785. His *Life and Correspondence*, by his grandson, William B. Reed, of Philadelphia, published in 1847, is one of the most valuable contributions which has been made to our Revolutionary history.

charged the most exorbitant fees, without the slightest color of law. The matter was at once brought before the Assembly, and Mr. Tucker was now arraigned as the criminal. A memorial, charging him with these illegal exactions, was presented to the House, signed by James Kinsey, Samuel Al-
linson, and John Lawrence, in which they declare, that the execution fees demanded by Sheriffs were the most grievous oppression under which the people labored—that while attorneys were obliged to have their bills of costs taxed by the Court, and filed with the Clerk, the Sheriffs were under no such obligation—and that these execution fees being frequently confounded with the costs of the suit, the lawyer was loaded with the whole censure.

The House spent much time in the investigation of these charges; and Mr. Tucker, being a member of that body, had of course every opportunity of defending himself, and was not likely to be convicted without very clear proof of his guilt. But the result was, the adoption by a large majority of the following resolution:—"That it is the opinion of this House, that the said Samuel Tucker has taken excessive and illegal fees, not warranted by the laws of the Province, and that the same are oppressive, and a very great grievance." After this, I presume, Mr. Tucker let the attorneys alone.

But the spirit of hostility to the lawyers, did not vent itself merely in petitions to the Assembly. It proceeded in some instances to open violence. In July, 1769, a multitude of persons assembled in a riotous manner at Freehold, in the county of Monmouth, and endeavored to prevent the lawyers from entering the Court House, and transacting business. But the tumult was at this time quelled, owing in a great measure to the spirited exertions of Richard Stockton. "While all men were divided betwixt rash or timid counsels, he only with wisdom and firmness seized the prudent mean, appeased the rioters, punished the ringleaders, and restored the laws to their regular course."¹ But at the Term of January, 1760, a more successful effort was made. On the day appointed for holding the County Court, a large number of people came together, armed with clubs and other offensive weapons, and by their violence and threats, drove the attorneys from the bar, and set the laws at defiance. Riots of a similar nature occurred about the same time in the county of Essex, and among other outrages perpetrated, was the setting fire to the stables and out-houses of David Ogden.

A special Commission was at once issued for

¹ Dr. Smith's Funeral Discourse upon Mr. Stockton, p. 40.

the trial of the offenders, and to give weight and dignity to it, a number of gentlemen of rank and character were associated with the Justices of the Supreme Court. In Essex the rioters were promptly punished; but in Monmouth, where the disaffection was more general, they were screened from chastisement by the sympathy of their fellow-citizens.

A meeting of the Legislature was also called, for the purpose of reviving and continuing process in the Courts of the county of Monmouth, and adopting such measures as might be necessary, to vindicate the majesty of the law, and support the authority of government. Governor Franklin sent a message to the Assembly, recommending the passage of a number of laws, which he thought the exigencies of the occasion required; and telling them very plainly, that in his opinion, this cry against lawyers was raised only for the purposes of deception, and that the unwillingness of some to pay their just debts, and the inability of others, were the true causes of all the difficulties that had arisen. The House in reply assured the Governor, that they would ever discountenance such riotous proceedings, and would heartily join in such measures, as were necessary to bring the offenders to condign punishment; and they declared, that the

best remedy against any abuses from the practitioners of the law, was one, which the people had in their own hands, namely, *a patriotic spirit of frugality and industry, and an honest care to fulfill contracts.*

It might be worth while to inquire, whether those who thus made war upon the lawyers, were equally ready to take up arms against the enemies of their country, in the contest which soon followed. We know there were a good many Tories in the county of Monmouth, as well as in other parts of the State; and if the truth were known, I suspect it would be found, that among those who took sides with the British, were included most of the individuals who were engaged in these riotous proceedings. Nor is this mere conjecture. The same thing happened precisely in North Carolina, where in 1771, a body of men, to the number of about fifteen hundred, calling themselves "Regulators," and complaining of the oppressions attending the practice of the law, rose in arms, for the purpose of exterminating lawyers, and shutting up the Courts of justice. And yet most of these very persons, in the Revolution, joined the royal party, and enlisted under the King's banner.¹ Nor should this

¹ Grahame's Col. Hist., II. 466. Sabine's American Loyalists, 26.

surprise us. The freedom for which our fathers contended, was not an unlicensed freedom, but a liberty regulated by law.

In 1772, Chief Justice Smyth was appointed one of the Commissioners to examine into the affair of the burning of the British Schooner *Gaspee*, by a party of Rhode Island Whigs. Wanton, the Governor of Rhode Island, Horsmanden, Chief Justice of New York, Oliver, Chief Justice of Massachusetts, and Auchmuty, Judge of Admiralty, were associated with him in the Commission. They began their sitting at Newport, on the fifth of January, 1773, and continued in session until the twenty-fourth of June. But although the most diligent and searching inquiries were made, and large rewards offered for the discovery of the offenders, not a particle of evidence could be procured against a single individual.¹ This is the "Court" alluded to, in the address of the first Congress, to the inhabitants of the Colonies, where it is said, "A Court has been established at Rhode Island, for the purpose of taking colonists to England to be tried." It was a Court of *Inquiry* only; and if any delinquents had been detected, they were to have been sent to England for trial.²

¹ Grahame's Col. Hist., II. 467.
Gordon. Holmes.

² Griffith's Historical Notes, p. 261.

The time had now arrived, when it became necessary for every man to decide upon the part which he would take in the approaching contest. It is due to Chief Justice Smyth to say, that he never seems for one moment to have faltered in his course. He was throughout, a firm and consistent loyalist. Nor was he at any pains to conceal his sentiments. Thus, in a charge to the Grand Jury of the county of Essex, at the Term of November, 1774, he alluded to the troubled state of the times, and among other things observed, "that the *imaginary* tyranny three thousand miles distant," was less to be feared and guarded against, than the "*real* tyranny at our own doors." This was bold language to be uttered, at such a time, and in such a place; and it drew from the Grand Jury a reply, so spirited and patriotic, that it deserves a conspicuous place among the memorials of our Revolutionary history.

After expressing their obligations to the Chief Justice for his "friendly admonitions," and the "paternal tenderness" he had evinced for their welfare, they proceed to say:—"But respecting the *tyranny at the distance of three thousand miles*, which your Honor is pleased to represent as *imaginary*, we have the unhappiness widely to differ from you in opinion. The effect, Sir, of that tyranny is too

severely felt, to have it thought altogether visionary. We cannot think, Sir, that taxes imposed upon us by our fellow subjects, in a Legislature in which we are not represented, is an imaginary, but that it is a real and actual tyranny; and of which no nation whatsoever can furnish a single instance. We cannot think, Sir, that depriving us of the inestimable right of trial by jury; seizing our persons, and carrying us for trial to Great Britain, is a tyranny merely imaginary. Nor can we think with your Honor, that destroying Charters, and changing our forms of Government, is a tyranny altogether ideal:—That an Act passed to protect, indemnify, and screen from punishment, such as may be guilty even of murder, is a bare idea;—That the establishment of French Laws and Popish religion in Canada, the better to facilitate the arbitrary schemes of the British Ministry, by making the Canadians instruments in the hands of power to reduce us to slavery, has no other than a mental existence. In a word, Sir, we cannot persuade ourselves, that the Fleet now blocking up the port of Boston, consisting of ships built of real English oak, and solid iron, and armed with cannon of ponderous metal, with actual powder and ball; nor the Army lodged in the Town of Boston, and the fortifications thrown about it,—substantial and formida-

ble realities,—are all creatures of the imagination. These, Sir, are but a few of the numerous grievances under which America now groans. These are some of the effects of that deliberate plan of tyranny, concerted at ‘three thousand miles distance,’ and which, to your Honor, appears only like the ‘baseless fabric of a vision.’ To procure redress of these grievances, which to others assume the form of odious and horrid realities, the Continent, as we learn, has very naturally been thrown into great commotions; and as far as this County in particular has taken part in the alarm, we have the happiness to represent to your Honor, that in the prosecution of measures for preserving American liberties, and obtaining the removal of oppressions, the people have acted in all their popular assemblies (which it is the right of Englishmen to convene whenever they please) with the spirit, temper, and prudence, becoming freemen and loyal subjects.”

And they conclude, by expressing their hearty wishes, that while the great cause of liberty was so warmly, and at the same time so peaceably vindicated by all honest Americans, no bias of self-interest, no fawning servility to those in power, no hopes of future preferment, would induce any man to lend his helping hand to the unnatural and dia-

bolical work, of riveting those chains which were forging for them, *at the distance of three thousand miles.*¹ How this keen rebuke was received by the Chief Justice, we are not informed.

The destruction of the tea in Boston is familiar to all. It is not so generally known, that we had in New Jersey a little affair of our own of the same kind. The captains of the tea ships destined for Philadelphia, did not deem it safe to land their cargoes there, and most of them returned to England. One however, in the brig Greyhound, ventured up the Cohansey, and discharged at Greenwich, a quiet little village in the County of Cumberland, where a popular outbreak was never dreamed of. The tea was landed without resistance, and deposited in the cellar of a house fronting the market-place. But on the twenty-second of November, 1774, about forty men assembled in the dusk, of the evening, deliberately took possession of the tea, removed the chests from the cellar, piled them up in an adjoining field, and made a bonfire of them.²

We are indebted to one of our venerable Vice Presidents, Col. Robert G. Johnson, for the names of many of these ardent and resolute patriots. One

¹ A copy of this address will be found in Clarke and Force's American Archives. Fourth series, vol. i. p. 967.

² Johnson's History of Salem, p. 123.

of them was the late Ebenezer Elmer, father of the Hon. Lucius Q. C. Elmer, of Bridgeton; another was Richard Howell, afterwards Governor of the State; a third was James Ewing, father of the distinguished Chief Justice of New Jersey; and a fourth was the Rev. Andrew Hunter,¹ a man as distinguished for his piety as his patriotism, and who was a chaplain in the American army, during the whole of the Revolutionary war. His second wife was the daughter of Richard Stockton, the signer of the Declaration of Independence; and one of his sons became Attorney General of the State.

Suits were brought in the Supreme Court, by the owners of the tea, for the recovery of damages, against those who had been concerned in the destruction of it; but the Whigs of the County held a meeting, and resolved that funds should be raised for the purpose of defending the actions. Joseph Reed, and Charles Pettit, of Philadelphia, were employed by the owners of the tea; and Joseph Bloomfield, afterwards Governor of New Jersey, Elias Boudinot, of Elizabethtown, Jonathan Dickinson

¹ His father, the Rev. Andrew Hunter, was the beloved and venerated pastor of the Presbyterian church of Greenwich, in the county of Cumberland. He was like his son, an ardent Whig, and up to the period of his death, exerted all his en-

ergies, both in and out of the pulpit, to awaken amongst the people a spirit of resistance to the arbitrary and oppressive measures of the British government. He died in July, 1775.—*Johnson's History of Salem*, p. 91.

Sergeant¹ of Princeton, and George Read of Newcastle, were retained on behalf of the Defendants. The suits, however, were never brought to trial. The Plaintiffs being non-residents, a rule was obtained to file security for costs, and no further proceedings appear to have been taken.

At the next term of the Oyer and Terminer, for the County of Cumberland, Chief Justice Smyth presided; and it was probably the last opportunity which he had, of making a display of his loyalty from the Bench. He inveighed with much severity against the "wanton waste of property," and the flagrant breach of the peace, which had been committed, and charged the Grand Jury strongly upon

¹ Jonathan Dickinson Sergeant, was born near Princeton in 1746. He was graduated in the College of New Jersey in 1762. After reading law with Richard Stockton, he commenced practice at Princeton, and pursued his profession there up to the period of the Revolution. He was a member of the Provincial Congress of New Jersey in 1775, and 1776, and took an active part in their proceedings. He was one of the Committee that drafted the first Constitution of New Jersey. In February, 1776, he was elected a delegate from New Jersey to the general Congress then sitting in Philadelphia. He took his seat in that body, but resigned it before the Declaration of Independence was adopted. His house in Prince-

ton was burnt by the British army in its march through New Jersey in 1776. In 1777, upon his being invited to accept the office of Attorney General of Pennsylvania, he removed to the city of Philadelphia. He died in 1793, of yellow fever, to which he was exposed by his benevolent exertions as one of the committee of twelve, who offered their services to the city during the prevalence of the disease. He had an active and powerful mind, and was as distinguished for his moral as for his intellectual qualities. He was the father of the Honorable John Sergeant of Philadelphia; and the Rev. Dr. Samuel Miller, of Princeton, married one of his daughters.

the subject. But the Whigs of Cumberland were as inflexible as those of Essex. The Grand Jury came into Court, without bringing in any bills. He sent them out a second time, but they still refused to find any indictments.¹

But here we must part with Chief Justice Smyth. When the Revolution broke out, he removed to Philadelphia, where he died. His reputation as a Judge was highly respectable, but it was eclipsed by that of his more distinguished associates upon the Bench, of whom we are now to speak.

In the struggle for independence, a majority of the lawyers in the Colonies, were undoubtedly Whigs. Most of the speakers and advocates on the popular side were members of the Bar; and one of the objects of the "Stamp Act," was to drive from the profession those, who were perpetually annoying the royal Governors, and who were termed by a member of the House of Commons, "mere pettifoggers." But still it has been said, that the "giants of the law" in the Colonies, were nearly all Loyalists. This no doubt was to some extent true. In fact, the anti-revolutionary Bar of Massachusetts and New York, furnished the Courts of New Brunswick, Nova Scotia, and Canada, for many years, with their most distinguished Judges.²

¹ Johnson's History of Salem, p. 125.

² Sabine's American Loyalists, p. 52.

One of these giants of the law in New Jersey, was David Ogden, an associate Judge of the Supreme Court, while Frederick Smyth was Chief Justice. He was perhaps the first of a race of men, afterwards numerous in New Jersey, and which I trust will never become extinct; I mean thoroughbred lawyers,—men, who love their profession, who devote themselves to it, who are satisfied with its honors, and look not beyond it for distinction. The name of Ogden seems to belong in an especial manner to the Bar of New Jersey. For the last hundred and twenty years, never has there been a time, when the profession has not been graced by at least one eminent individual of that name.

David Ogden sprung from an ancient and respectable family that came to New England at an early day, and thence removed to Long Island and New Jersey. He was a son of Josiah Ogden, who for many years represented the county of Essex in the Colonial Assembly; and a brother of Dr. Jacob Ogden, a distinguished physician, who was born and educated in Newark, but subsequently settled in Jamaica, Long Island, where he died in 1780.¹ David Ogden was born in Newark, somewhere about the year 1707. He completed

¹ For a notice of Dr. Jacob Ogden, see Thompson's *History of Long Island*. I. 275. Note.

His education at Yale College, where he was graduated in 1728; and after reading law for some years in the city of New York, he returned to his native State, to pursue his profession and to become one of its brightest ornaments. He was not a man of genius, in the ordinary acceptation of the term—a quality, by the by, which is quite as apt to mar as to make the fortune of a lawyer—but of clear head, of strong sense, and of sound judgment. And, what was of more importance still, he was a most diligent student, and of untiring industry and application. Up at four in the morning, winter and summer, he had done a day's work, before most of his professional brethren were out of their beds. He rose therefore rapidly in his profession; soon acquired an extensive and lucrative practice; and, for many years, stood confessedly at the head of the Bar in New Jersey. He was frequently concerned in the trial of important causes in the city of New York, where, if he had any equal, he certainly had no superior. But here, he was for a long time without a rival. He was looked up to as an oracle of the law, and his opinions had almost the weight of judicial decisions.

In 1772, he was appointed a Judge of the Supreme Court; and probably, no man ever brought to that station qualifications of a higher order.

Solid rather than brilliant; more distinguished for accuracy of judgment than fertility of invention, and for clearness of apprehension than for quickness of perception; of deep learning; of long practice; and of unsullied integrity; he seemed to combine every property requisite for a Judge.¹ But, unhappily for him, he was not long permitted to display these qualities. The period was approaching, when laws were to be silenced by the din of arms, and a new scene was to present itself, in which he was not so well fitted to act a part. We have seen, in reference to the Stamp Act, that while he was ready to concur in all peaceful methods of redress, he was opposed to every thing that looked like forcible resistance. Such continued to be his course until hostilities actually commenced; and then, he bid adieu to the place of his birth, to the home of his youth, to the seat of his family, of his fortune, of his fame. He sought refuge under the protection of the British, in the city of New York, where he remained during the war.

¹ "Judges," says Lord Bacon, "ought to be more learned than witty, more reverend than plausible, and more advised than confident. Patience and gravity of hearing is an essential part of justice; and an over-speaking judge is no well-tuned cymbal. It is no grace to a judge first to find that which he might have heard in due time from the bar; or to show quickness of conceit in cutting off evidence or counsel too short, or to prevent information by questions, though pertinent."—*Bacon's Works*. I. 58.

But he was not satisfied with mere neutrality. He was not only a loyalist, but an active and a determined one. He was a member of the Board of Refugees, established at New York, in 1779, composed of delegates from the loyalists of the different Colonies, and of which Governor Franklin was at one time president.¹ After Joseph Galloway, the celebrated loyalist of Pennsylvania, retired to England, David Ogden became one of his correspondents, and his letters are said to evince much bitterness of feeling. He drew up the outlines of a plan for the government of the Colonies, after their submission to Great Britain, an event, which, as he expressed it, "was certain, and soon to happen, if proper measures were not neglected." By this plan it was proposed, that the British Parliament should formally renounce the right to tax the Colonies; that each Colony should have a Governor and Council appointed by the Crown, and a House of Representatives to be elected by the freeholders

¹ It was mainly through the agency of Daniel Coxe—another Jerseyman, and a member of Council during Governor Franklin's administration—that this Board of Refugees or Loyalists, was organized. He was made President of the Board, and the reason for putting him in the chair, is thus given by Christopher Sower, an influential loyalist of Pennsylvania, in a letter written December 5th, 1779. "The Deputies of the Refugees from the different Provinces meet once a week. Daniel Coxe, Esq., was appointed to the chair, to deprive him of the opportunity of speaking, as he has the gift of saying little with many words."—Sabine's *American Loyalists*, p. 232.

and residents of the several counties, who were to make all necessary laws for the internal regulation and government of the respective Colonies; that an American Parliament should be established for all the English Colonies on the continent, consisting of a Lord Lieutenant—Barons, to be created for the purpose, and appointed by the Crown out of the freeholders and inhabitants of the Colonies—and a House of Commons, to be elected by the respective Houses of Representatives for each Colony—which Parliament was to be styled the Lord Lieutenant, the Lords, and Commons, of the British Colonies in North America. This American Parliament was to have the power of enacting laws in all cases whatsoever, for the general welfare and safety of the Colonies, which laws were to be in force, until repealed by his Majesty in Council; and they were also to apportion among the several Colonies, the amount of taxes to be raised by each. The mode of raising them, was to be left to the General Assembly of each Colony, but in case of their refusal or neglect, the American Parliament was to have power to levy the same. It was also provided, that the American Parliament should have the superintendence and government of the several colleges in North America, “most of which,” it was alleged, “have been the grand

nurseries of the late rebellion, instilling into the tender minds of youth principles favorable to republican, and against a monarchical Government." This was a compliment to our literary institutions, which by no one was more richly merited, than by our own College of New Jersey, of which Dr. Witherspoon, one of the signers of the Declaration of Independence, was the President.

But that event, that was deemed so "certain and soon to happen," luckily never arrived, and this ingenious plan, therefore, was of course never carried out; but it is not very difficult to imagine, who were intended to be the Barons in the several Colonies, that were to compose our American House of Lords.

After the peace, Mr. Ogden went to England, and was agent for the New Jersey loyalists in prosecuting their claims to remuneration for losses which they had sustained. His own property, which was large and valuable, was confiscated by the State of New Jersey, and he received a compensation for it from the British Government. He remained in England until 1790, when he returned to the United States, where he found in operation, a better plan of government than the one which he had devised. He took up his residence in Queens County, Long Island, where he lived until his death,

which did not happen until the year 1800, when he had reached the advanced age of ninety-three. While he resided on Long Island, he occasionally visited Newark, where he was always received with affection and respect, most of the old inhabitants waiting upon him, and welcoming him.

He left a number of sons, two of which, Isaac and Abraham, were lawyers. Isaac was in full practice in Newark at the time of the Revolution, and had been Clerk of the Supreme Court. He followed the fortunes of his father, joined the British in New York, remained there during the war, then went to England, and afterwards settled in Canada, where he was appointed a Judge of the Supreme Court, and so continued until his death. Abraham resided in Newark, and for many years after the Revolution, was a distinguished member of the New Jersey Bar. He was United States District Attorney, under the administration of Washington. As a jury lawyer, he is said to have been unrivalled. He was also a fine belles-lettre scholar. He was a member of the Legislature in 1790, and advocated with much force, but without success, the calling of a Convention to revise the Constitution of the State.¹ He died suddenly in

¹ It was in answer to a speech of Kitchell, a member from the county Abraham Ogden's in favor of a revision of the Constitution, that Aaron Morris, exclaimed, "When the fox preaches let the geese beware."

1798, when upwards of sixty years of age.¹ Samuel, another son, married a sister of Gouverneur Morris, and was a man of considerable distinction. He was a member of the Legislature of Pennsylvania, and of the Convention that framed her Constitution of 1790. He was the father of David B. Ogden of New York, who after sustaining for some years in New Jersey the professional honor of his family and name, removed to a sister State, where he has long been the pride and ornament of the Bar. To him I am indebted for many particulars in the life of his grandfather.

The other associate of Chief Justice Smyth upon the Bench of the Supreme Court, at the breaking out of the Revolution, was Richard Stockton; and with him, I must close these im-

It is to this, that Mr. Griffith alludes in his 'Eumenes,' when he says:—"One of the opposers of a Convention, introduced the fable of the *fox* and *geese*; and in a very extraordinary strain of compliment, represented an advocate for a Convention in the character of the *fox*, and the honorable auditory as a *flock of geese*."—*Griffith's Eumenes*, p. 15, n. b.

¹ Among the students in the office of Abraham Ogden, were Josiah Ogden Hoffman, who became Attorney General of the State of New York, and was a Judge of the Superior

Court at the time of his death; and Gabriel H. Ford, who for so many years adorned the Bench of the Supreme Court of New Jersey, and who is still living in the full enjoyment of all his faculties. About the same time, there were in the office of Elisha Boudinot of Newark, Richard Stockton, William Griffith, and Alexander C. McWhorter, all of whom, I need scarcely say, became eminent in their profession. They formed the "*Institutio Legalis*" of Newark, a sort of Moot Court, which was kept up for many years.

perfect sketches, already, perhaps, too far extended.

Richard Stockton was born at Princeton, on the first day of October, 1730. His ancestors, who came from England at an early day, were the first settlers in this part of the State; his great-grandfather having purchased of William Penn a tract of land, containing between five and six thousand acres, extending from the Province line, about two miles south of Princeton, to the Millstone River, near where the village of Kingston now stands. A portion of this property has remained in the family to the present day. His father, John Stockton, was a gentleman of fortune, and of high character, a liberal friend of the College of New Jersey, and for many years the presiding Judge of the Court of Common Pleas of the county of Somerset. He died in 1757.

Richard being the eldest son, great pains were bestowed upon his education. After receiving such instruction as his native village—always famous for its schools—could afford, he was sent to an academy at Nottingham, in Maryland, which had just been established by the Rev. Samuel Finley, afterwards President of the College of New Jersey. Dr. Finley was a ripe scholar, and a skillful teacher, and his school became a very celebrated one.

Some of the most distinguished men in our country were educated here. It could boast of having in it, at one time, a cluster of pupils, all of whom became eminent in their several departments. Among these, were Dr. Benjamin Rush of Philadelphia, and his brother Judge Rush; the Rev. James Waddell of Virginia, of whose eloquence so vivid a description is given by Wirt, in his *British Spy*; the Rev. Alexander McWhorter of Newark, for many years, a distinguished supporter of literature and religion in the American church; Ebenezer Hazard of Philadelphia, Postmaster General of the United States in 1782, and author of a valuable work in reference to American history, entitled, *Historical Collections*; Alexander Martin, Governor of North Carolina, and a delegate to the Convention which framed the Constitution of the United States; John Henry, a member of Congress during the Revolution, a Senator of the United States, and Governor of Maryland; and Colonel John Bayard, an eminent Christian and patriot, a member of the old Congress, and Speaker of the House of Representatives of Pennsylvania.

Mr. Stockton remained under the care of Dr. Finley about two years, and was then sent to the College of New Jersey, and received the honors of its first annual commencement at Newark, just a

hundred years ago. He read law under the direction of David Ogden of Newark, whose reputation attracted to his office students from all parts of the Province. He was admitted to the Bar in the Term of August, 1754, and at once entered upon the duties of his profession at Princeton. His fine natural powers had been highly cultivated and improved by study and discipline, and his success was rapid and brilliant. His practice soon became coextensive with the Province, and he was often invited to conduct causes in the neighboring Colonies. Although as a lawyer, he might still have been willing to acknowledge David Ogden as his master, yet as an eloquent and accomplished advocate, he had no competitor.

He pursued his profession for twelve years with unremitting ardor. But in 1766, he relaxed from his toils, and made a visit to England, where he remained some fifteen months. He was received with much attention, and was frequently consulted by the Marquis of Rockingham, and other distinguished friends of America, upon the affairs of the Colonies. In conjunction with Dr. Franklin, he had several interviews with the merchants of London, trading to North America, upon the subject of a paper currency in the Colonies, and with a view to the repeal of the act of Parliament prohibiting future emissions.

While Mr. Stockton was in England, Dr. Finley, the President of the College of New Jersey, died, and the trustees unanimously elected the Rev. Dr. Witherspoon, of Paisley, in Scotland, as his successor. The letter to Dr. Witherspoon, informing him of his appointment, was transmitted to Mr. Stockton, who was a member of the Board, with a request, that he should make a personal application to Dr. Witherspoon, to solicit his acceptance. To do this, it became necessary that he should take a journey to Scotland. The result of his visit, and the agency which he had in securing to the College the services of Dr. Witherspoon, will best appear, from some extracts which I am enabled to make from letters, written by him about this time to his wife.

In a letter, dated February the 9th, 1767, he says:—"I have at last concluded to go to Scotland. The friends of the College here, press the propriety of the step, as much as those on your side the water have done. The event will show, whether I take all this labor in vain." Upon his return from Scotland, in a letter dated London, March the 17th, 1767, he thus writes:—"It is a matter absolutely certain, that if I had not gone in person to Scotland, Dr. Witherspoon would not have had a serious thought of accepting the office—be-

cause neither he, nor any of his friends with whom he would have consulted, had any tolerable idea of the place to which he was invited, had no adequate notions of the importance of the College of New Jersey, and more than all, would have been entirely discouraged from thinking of an acceptance, from an artful, plausible, yet wickedly contrived letter, sent from Philadelphia to a gentleman of Edinburgh. I have obtained a copy of it, but cannot take time to send you any extracts, nor would it be necessary if I had time, because the contents of it at present had better be unknown. I was so happy, as to have an entire confidence placed in me by Dr. Witherspoon, and thereby I was able to come fairly at him. I certainly have succeeded in removing all the objections which have originated in his own mind. Those of Mrs. Witherspoon I could not remove, because she would not give me an opportunity of conversing with her, although I went from Edinburgh to Paisley, fifty miles, on purpose. After I returned from Paisley to Edinburgh, letters passed between Dr. Witherspoon and me, whereby I have received some hopes that she may be brought over. This firmness is not peculiar to this case; for her own husband informed me, that she was as much averse to removing from an inconsiderable place to Paisley, where he was

then minister—from whence we should put a good-natured construction, and suppose that it is only owing to a certain greatness of mind, averse to changing place. I wish we may have reason to think so finally. I have taken most effectual measures to make her refusal very troublesome to her. I have engaged all the eminent clergymen in Edinburgh and Glasgow, to attack her in her intrenchments, and they are determined to take her by storm, if nothing else will do. This has a favorable aspect, and is at the same time surprising; because they were upon my first coming, so unwilling to part with her husband; but the light in which I have set the affairs of the College, has made them perfect proselytes.”

Soon after Mr. Stockton's return to New Jersey, he had the satisfaction of informing the board of trustees, that he had received letters from Scotland, informing him, that the difficulties which had prevented Dr. Witherspoon's acceptance of the Presidentship had been removed, and that upon a re-election, he would esteem it a duty to accept the appointment. It is due to Mrs. Witherspoon to say, that she became perfectly reconciled to her husband's removal, and cheerfully accompanied him to a distant clime, renouncing all hope of ever returning to the “land of her fathers' sepulchres.”

Mr. Stockton's reception in Edinburgh was flattering to him. He was waited upon by the Lord Provost and Council, who invited him to a public dinner, after which the freedom of the city was conferred upon him. A similar honor was paid to him in the town of Paisley. He returned to America in September, 1767. The next year he was made a member of Council, and in 1774, he was appointed a Judge of the Supreme Court, and took his seat upon the Bench alongside of his old and honored preceptor, David Ogden.

His subsequent career is too well known, to make it necessary that I should dwell upon it. On the twenty-first of June, 1776, he was elected a member of the general Congress, then sitting in Philadelphia. Among his colleagues, was Dr. Witherspoon, who from his first landing upon our shores, had proved himself to be in heart an American; who from the earliest stage of the contest, had warmly espoused the cause of the Colonies; and who shed lustre upon his adopted country, no less by his wisdom in council, than by his zeal for the promotion of science and learning. The delegates from New Jersey were instructed to unite with the representatives of the other Colonies, in the most vigorous measures for the support of the just rights and liberties of America; and if it

should be thought expedient and necessary, to join in declaring the United Colonies independent of Great Britain.

Mr. Stockton was present during the debates in Congress, which preceded the Declaration of Independence; in a short but energetic speech, he expressed his full concurrence in the measure, and had the honor of affixing his name to that immortal instrument.¹ But if there was honor, there was

¹ Mr. Sedgwick, in his *Life of Governor Livingston*, p. 194, note, observes, that the New Jersey delegation, consisting of Witherspoon, Stockton and others, arrived after the Declaration had been signed, but were allowed to affix their names to it. This statement is made on the authority of a letter from Samuel Adams to Richard Henry Lee, dated July 15th, 1776, in which the following expressions occur:—"We were more fortunate than we expected, in having twelve of the thirteen Colonies in favor of the all-important question. *The delegates of New Jersey were not empowered to give their voice on either side.* Their Convention has since acceded to the Declaration, and published it, even before they received it from Congress."—*R. H. Lee's Mem.*, vol. i, p. 183.

This is unquestionably high authority, nor is it easy to see, how Mr. Adams could have been mistaken with regard to a matter of this kind. And yet it is very certain, that the

delegates from New Jersey *were* empowered to vote in favor of Independence, and that they did do so. They took their seats in Congress some days before the final question was taken upon the Declaration, and participated in the debates which preceded its adoption. They were appointed on the 21st of June, after the proposition to declare Independence had been brought forward in Congress, and with a full knowledge of that fact; and they were expressly authorized "to join with the delegates of the other Colonies in declaring the United Colonies independent of Great Britain, and entering into a Confederation for union and common defence." On the 28th of June, as appears by the Journal, Mr. Hopkinson appeared in Congress, and presented the *instructions* under which he and his colleagues were appointed.—*Journals of Congress*, vol. ii., p. 230. How then Mr. Adams, writing on the 15th of July, could have said, that the New Jersey delegates were not empowered to give their voice on

also peril in it; and no one of those illustrious men hazarded more, or suffered more, than he did. His residence at Princeton was directly in the route of the victorious British Army, in its triumphant march through New Jersey. His happy home was soon the scene of desolation, his estate was laid waste, his property pillaged and destroyed. Compelled to fly with his wife and children to a place of safety, he sought refuge in the house of an old friend and fellow-patriot in the county of Monmouth. But the place of his retreat was soon discovered by a party of refugee royalists, who dragged him from his bed at night, subjected him to every species of insult and indignity, exposed him to all the severity of a most inclement season, hurried him to Amboy, and thence to the city of New York, where he was ignominiously thrown into a common jail. Here his treatment was so severe and inhuman, as to call for the interposition of

either side, is inexplicable. That Dr. Witherspoon was present during the discussion of the question of Independence, appears from various circumstances. In the original draft of the Declaration, among the foreign mercenary troops, which George III. is upbraided with having sent to invade America, the *Scotch* are mentioned. It was upon the motion of Dr. Witherspoon, or at his instance, that this word was stricken out.—R.

H. Lee's Mem., vol. i. 176. So when a distinguished member of Congress said, we were "not yet ripe for a Declaration of Independence," Dr. Witherspoon replied, "in my judgment, sir, we are not only ripe, but rotting."—*Saunderson's Biography of the Signers*, vol. ii. 215. It is equally certain that Mr. Stockton was present and took part in the debates.—*Saunderson's Biography of the Signers*, vol. ii. 192.

Congress, who instructed General Washington to remonstrate with General Howe, against this wanton violation of all the rules of civilized warfare.

He was at length released from his cruel captivity, but his constitution had received a shock from which it never recovered, and the period of his active usefulness was at an end. The few remaining years of his life were embittered by a cancerous affection, of peculiar malignity, and which preyed upon him with the most exquisite pain, from which no relief could be obtained but by the use of anodynes. But although he did not live to see that independence, for which he had done and suffered so much, secured and acknowledged, yet he died in the full faith and hope of its final accomplishment. He expired on the twenty-eighth of February, 1781, at his residence in Princeton, in the fifty-first year of his age.¹ His remains were taken to the chapel of

¹ Mr. Stockton left two sons and four daughters. Both of his sons became very eminent as lawyers. Richard, the eldest, died at Princeton, March 7th, 1828. Lucius Horatio died at Trenton, May 26th, 1835. Julia, his eldest daughter, was married to Dr. Benjamin Rush, who was also a signer of the Declaration of Independence. She lived to an advanced age, and died in Philadelphia, July 7th, 1848. Susan was married to Alexander Cuthbert, of Canada,

and died at Princeton, October 2nd 1821. Mary was married to the Rev. Dr. Andrew Hunter, of whom mention has already been made; she died at Princeton, March 18th, 1846. Abby, the youngest daughter, and only surviving child of Mr. Stockton, was married to Robert Field, of Whitehill, in the county of Burlington. She is still living at Princeton.

Mr. Stockton married the sister of the late Dr. Elias Boudinot, of Burlington, who was President of Con-

the College, where a funeral discourse was pronounced by the Rev. Dr. Samuel Stanhope Smith, then the Vice-President of that institution.

"It was one of his earliest honors," said this eloquent divine, "to have been a son of this College, and it was one of the first honors of this College, to have given birth to such a son. After having adorned the place of his education by his talents, he soon rose to the Board of its Trustees, and has ever since been one of its most distinguished patrons.

"Young gentlemen," said he, addressing the students of the College, "another of the fathers of learning and of eloquence is gone. While you feel and deplore his loss as a guardian of your studies, and as a model upon which you might form yourselves for public life, let the memory of what he *was* excite you to emulate his fame; let the sight

gress under the Confederation, a member of the House of Representatives after the adoption of the Constitution, and the first Director of the Mint of the United States. Mrs. Stockton was a woman of a highly cultivated mind, and of fine literary taste. She wrote a number of poetical effusions, many of which possessed no inconsiderable merit. When she heard of the destruction by the British of her valuable library, she is

said to have remarked, that there were two books in it which she chiefly valued, and if these were left to her, she would almost be reconciled to the loss of the rest; one was the Bible, and the other Young's Night Thoughts, of which she was a great admirer. The tradition is, that when she returned to her desolate mansion, these very books were the only ones that were found to have escaped.

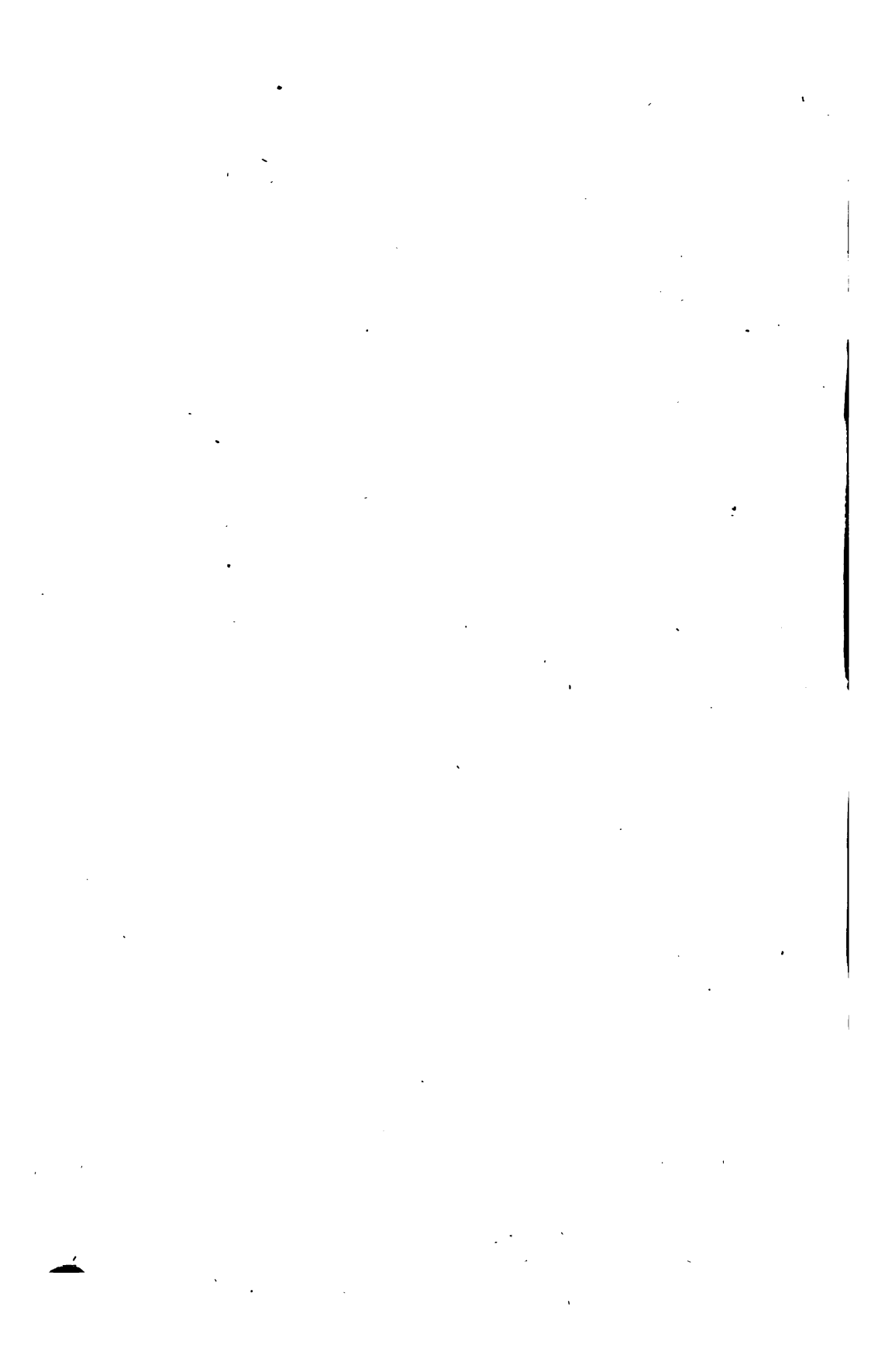
of what he is, teach you that every thing human is marked with imperfection.

“At the Bar he practised for many years with unrivalled reputation and success. . . . In Council he was wise and firm, but always prudent and moderate. . . . The office of a Judge of the Province was never filled with more integrity and learning than it was by him, for several years before the Revolution. . . . In his private life, he was easy and graceful in his manners; in his conversation affable and entertaining, and master of a smooth and elegant style even in his ordinary discourse. As a man of letters, he possessed a superior genius, highly cultivated by long and assiduous application. His resarches into the principles of morals and religion were deep and accurate, and his knowledge of the laws of his country extensive and profound. He was well acquainted with all the branches of polite learning; but he was particularly admired for a flowing and persuasive eloquence, by which he long governed in the Courts of Justice.”

Such were the last Judges of our Supreme Provincial Court. And thus, its dying glory was the brightest. But it was destined to be revived when the Colony became a State, and to shine with new lustre—graced by a succession of such Chief

Justices, as Brearley, and Kinsey, and Kirkpatrick, and Ewing—to which, we may not doubt, will hereafter be added the names of others no less distinguished, but of whom I am not now permitted to speak.

APPENDIX.



APPENDIX A.

IN connection with the Courts of East and West Jersey, under their Proprietary Governments, it may be well to glance at some of the more important laws which were enacted. Many valuable provisions which we have ingrafted upon the common law, and which now exist in our statute book, will be found to have originated at this early period.

The first step towards making lands liable for the payment of debts, was taken in East Jersey, in 1679. It was enacted, that where an execution issued against a person having lands, the defendant should make a conveyance of such lands to the plaintiff, in satisfaction of his debt; and upon his refusal to do so, he was to be imprisoned until the debt and charges were paid.¹ And, in 1682, provision was made for having the lands of a defendant in execution appraised, and the plaintiff was to take them at their appraised value in satisfaction of his debt, paying the overplus, if any, to the defendant.²

In West Jersey, as early as 1682, lands were made liable for the payment of debts, in all cases whatever, when

¹ Grants and Concessions, 136.

² *Ib.*, 253.

the personal estate of the defendant was insufficient for that purpose.¹

In East Jersey, in 1682, it was provided, that the estate of a Feme Covert might be conveyed by a deed acknowledged in the Court of Common Right, the wife declaring, upon a secret examination, that she signed it freely, without threats or compulsion of her husband.² By a subsequent act, this acknowledgment might be made before a Judge of any Court of Record in the Province.³

By the Fundamental Constitutions of the twenty-four Proprietors of East Jersey, it was declared, that there should be a public registry for deeds, in each County, and that every grant and conveyance of land—except leases for three years and under—not registered within six months, should be void in law.⁴ A similar provision is contained in the Concessions and Agreements of the West Jersey Proprietors.⁵ And, in 1695, a law was passed in West Jersey, imposing a penalty of *twenty shillings* upon every person neglecting for the space of six months to have a deed recorded.⁶

In East Jersey, proceedings against non-resident debtors were authorized in 1682;⁷ and, in West Jersey, in 1683, an act was passed, regulating attachments against absconding debtors, and providing for an equitable distribution of their goods and estate, among such of their creditors as should come in and prove their claim before three of the Magistrates of the Province.⁸

By the laws of West Jersey, executors were required to give security for the faithful performance of their trust;⁹

¹ Grants and Concessions, 447.

² *Ib.*, 235.

³ *Ib.*, 371.

⁴ *Ib.*, 162.

⁵ *Ib.*, 399.

⁶ Grants and Concessions, 541.

⁷ *Ib.*, 266.

⁸ *Ib.*, 477.

⁹ *Ib.*, 430.

and where parents died leaving children, and no estate sufficient to maintain and bring them up, the Governor was to appoint some one to take care of them, and the charges thereof were to be borne by the public stock of the Province.¹ In all trials wherein any of the native Indians were concerned, the Jury were to consist of six men of the neighborhood, and six of the native Indians.²

But while the civil laws and regulations of East and West Jersey bore a close resemblance to each other, nothing could be more unlike than their criminal codes. While the former exhibits all the sternness and severity of Puritan legislation, the latter shows in beautiful contrast the mildness and benignity of Quaker rule.

In East Jersey there were no less than thirteen distinct offences, for which the punishment of death might be inflicted. In this long list of capital crimes, were included not only murder, robbery, perjury, burglary, and rape, but witchcraft, smiting or cursing parents, and even stealing where the thief was incorrigible.

In West Jersey, on the other hand, there were no capital crimes; no offences for which the punishment of death was prescribed. Even in the case of murder and treason, it was provided, that the sentence and way of execution thereof, should be left to the General Assembly to determine, as they in the wisdom of the Lord should judge meet and expedient.³ False witnesses were to be severely fined, forever after disabled from giving testimony, and rendered incapable of holding any office or employment in the Province.⁴ Burglary was punished with whipping for the first offence; and for the second, branding with a T in the forehead; and for a third, branding in the cheek, and imprison-

¹ Grants and Concessions, 431.

² *Ib.*, 401.

³ Grants and concessions, 404.

⁴ *Ib.*, 429.

ment at hard labor.¹ The thief was to make restitution fourfold out of his estate, and for want of such estate, to work for his theft until restitution was thereby made.² The punishment for assault, battery, and wounding, was to be such, as *twelve men of the neighborhood* should determine upon.³ Two witnesses were required in all cases; the accused might challenge any number of jurors, not exceeding thirty-five, without assigning any reason; and it was provided, that in all criminal causes—treason, murder, and felony excepted—the prosecutor should have full power to forgive the offender, and remit the punishment, either before or after judgment.⁴

But it was not merely in the severity of the penal laws, that the influence of the Puritans was discernible in the early legislation of East Jersey. This but reflected the harsher features of their character. There were other enactments, in which their virtues and excellencies shone conspicuously forth. Thus, in 1693, an act was passed by the General Assembly of East Jersey, for the promotion of Education. It was entitled, "An Act for establishing Schoolmasters within this Province." Its preamble recites, that the cultivation of learning and good manners tends greatly to the good and benefit of mankind. It authorized the inhabitants of each Township to meet together, and choose three men, whose duty it should be to make a rate for the salary and maintaining of a Schoolmaster within the said Township, for as long a time as they should think fit; and it provided, that the consent and agreement of the major part of the inhabitants of the said Township, should bind and oblige the remaining part of the inhabitants to satisfy and pay their shares and proportions of said rate; and

¹ Grants and Concessions, 573.

² *Ib.*, 434.

³ Grants and Concessions, 434.

⁴ *Ib.*, 397.

the goods and chattels of persons refusing or neglecting to pay were to be distrained and sold.¹ This act is not only the earliest, but I am inclined to think, it is also the very best law we have ever had upon the subject of Common Schools. Whatever may have been its practical operation, it was certainly much more efficient in its provisions, than the act which is now in force.

We may also trace the influence of the Puritans, in the pious custom, which was introduced at an early period in the history of East Jersey, of setting apart, by public authority, a day of Thanksgiving to God for his mercies. In 1676, it was solemnly enacted by the General Assembly, that "whereas there hath been signal demonstrations of God's mercy and favor towards us in this Colony, in the preserving and continuing our peace in the midst of wars round about us, together with many other mercies which we are sensible of, which call aloud for our acknowledgment and thanksgiving to the Lord," therefore, "Be it enacted by this Assembly, that there be a day of public Thanksgiving set apart throughout the whole Province, to give God the Glory and Praise thereof, and oblige us to live to his praise, and in his fear always, which day shall be the second Wednesday in November next ensuing."² And, in 1679, we find the twenty-sixth day of November set apart, by an act of Assembly, as a day of Thanksgiving.³ This appointment of a day of Thanksgiving, by the representatives of the people convened in General Assembly, was calculated to add much to its solemnity, and it may be regretted, that we should now give to it no higher sanction than the Proclamation of a Governor.

¹ Grants and Concessions, 328.

³ Grants and Concessions, 137.

² *Ib.*, 121.

APPENDIX B.

INSTRUCTIONS *for our Right Trusty and well beloved EDWARD Lord CORNBURY, our Captain General and Governor in Chief, in and over our Province of Nova-Cæsarea, or New-Jersey, in America. Given at our Court at St. James's, the 16th Day of November, 1702, in the first Year of our Reign.*

1. **WITH** these our Instructions you will receive our Commission under our Great Seal of *England*, constituting you our Captain General and Governor in Chief of our Province of *New-Jersey*.

2. You are with all convenient speed to repair to our said Province, and being there arrived, you are to take upon you the Execution of the Place and Trust we have reposed in you, and forthwith to call together the following Persons, whom we do by these Presents appoint and constitute Members of our Council in and for that Province, viz. *Edward Hunlock, Lewis Morris, Andrew Bowne, Samuel Jennings, Thomas Revill, Francis Devenport,*

William Pinhorne, Samuel Leonard, George Deacon, Samuel Walker, Daniel Leeds, William Sandford, and Robert Quarry, Esqrs.

3. And you are with all due Solemnity, to cause our said Commission under our Great Seal of *England*, constituting you our Captain General and Governor in Chief as aforesaid, to be read and published at the said Meeting of our Council, and to cause Proclamation to be made in the several most publick Places of our said Province, of your being constituted by us our Captain General and Governor in Chief as aforesaid.

4. Which being done you shall yourself take, and also administer to each of the Members of our said Council, so appointed by us, the Oaths appointed by Act of Parliament to be taken instead of the Oaths of Allegiance and Supremacy, and the Oath mentioned in an Act, entitled, *An Act to declare the Alteration in the Oath appointed to be taken, by the Act, entitled, An Act for the further Security of his Majesty's Person, and the Succession of the Crown in the Protestant Line and for extinguishing the hopes of the Pretended Prince of Wales, and all other Pretenders and their open and Secret Abettors, and for declaring the Association to be determined.* As also the Test mentioned in an Act of Parliament made in the 25th Year of the Reign of King *Charles* the Second, entitled, *An Act for preventing dangers which may happen from Popish Recusants,* together with an Oath for the due Execution of your and their Places and Trusts, as well with regard to the Equal and Impartial Administration of Justice in all Causes that shall come before you, as otherwise, and likewise the Oath required to be taken by Governors of Plantations to do

their utmost, that the Laws relating to the Plantations be observed.

5. You are forthwith to communicate unto our said Council, such and so many of these our Instructions, wherein their Advice and Consent are mentioned to be requisite, as likewise all such others from Time to Time, as you shall find convenient for our Service to be imparted to them.

6. And whereas the Inhabitants of our said Province have of late Years been unhappily divided, and by their Enmity to each other, our Service and their own Welfare has been very much obstructed, you are therefore in the Execution of our Commission to avoid the Engaging your self in the Parties which have been form'd amongst them, and to use such Impartiality and Moderation to all, as may best conduce to our Service and the good of the Colony.

7. You are to permit the Members of our said Council to have and enjoy Freedom of Debate, and Vote in all Affairs of publick Concern, that may be debated in Council.

8. And altho' by our Commission aforesaid, we have thought fit to direct that any three of our Councillors make a Quorum, it is nevertheless our Will and Pleasure, that you do not Act with a Quorum of less than five Members except in case of Necessity.

9. And that we may be always informed of the Names and Characters of Persons fit to supply the vacancies which shall happen in our said Council, you are to transmit unto us by one of our Principal Secretaries of State, and to our Commissioners for Trade and Plantations, with

all convenient speed, the Names and Characters of six Persons Inhabitants of the Eastern Division, and six other Persons Inhabitants of the Western Division of our said Province, whom you shall esteem the best qualified for that Trust, and so from Time to Time when any of them shall dye, depart out of our said Province, or become otherwise unfit, you are to nominate unto us so many other Persons in their stead, that the List of Twelve Persons fit to supply the said Vacancies, viz. six of the East, and six out of the West Division as aforesaid, may be always compleat.

10. You are from Time to Time to send to us as aforesaid, and to our Commissioners for Trade and Plantations, the Names and Qualities of any Members by you put into our said Council, by the first conveniency after your so doing.

11. And in the Choice and Nomination of the Members of our said Council, as also of the principal Officers, Judges, Assistants, Justices and Sheriffs, you are allways to take care that they be Men of good Life and well affected to our Government, of good Estates and Abilities, and not necessitous People or much in Debt.

12. You are neither to augment nor diminish the number of our said Council, as it is hereby established, nor to suspend any of the present Members thereof without good and sufficient cause: And in case of suspension of any of them, you are to cause your Reasons for so doing, together with the Charges and Proofs against the said Persons, and their Answers thereunto (unless you have some extraordinary reason to the contrary) to be duly entered upon the Council Books, and you are forthwith to transmit the same,

together with your Reasons for not entering them upon the Council Books, (in case you do not enter them) unto us and to our Commissioners for Trade and Plantations as aforesaid.

13. You are to signify our Pleasure unto the Members of our said Council that if any of them shall at any Time hereafter absent themselves, and continue absent above the space of two Months together from our said Province without Leave from you, or from our Governor or Commander in Chief of our said Province, for the Time being, first obtained; or shall remain absent for the space of two Years or the greater Part thereof successively without our Leave given them under our royal Sign Manual, their Place or Places in our said Council, shall immediately thereupon become void, and that we will forthwith appoint others in their stead.

14. And in order to the better consolidating and incorporating the two Divisions of *East* and *West New-Jersey*, into and under one Government, Our Will and Pleasure is, that with all convenient speed, you call together one General Assembly for the Enacting of Laws for the joint and mutual good of the whole; and that the said General Assembly do sit in the first Place at *Perth-Amboy*, in *East New-Jersey*, and afterwards the same, or other the next General Assembly at *Burlington* in *West New-Jersey*; and that all future General Assemblies do set at one or the other of those Places alternately, or (in Cases of extraordinary Necessity) according as you with the advice of our aforesaid Council, shall think fit to appoint them.

15. And our further Will and Pleasure is, that the General Assembly so to be called, do consist of four and

Twenty Representatives; who are to be chosen in the manner following, viz. Two by the Inhabitants House-holders of the City or Town of *Perth-Amboy*, in *East New-Jersey*, two by the Inhabitants House-holders of the City and Town of *Burlington*. in *West New-Jersey*; Ten by the Freeholders of *East New-Jersey*, and Ten by the Freeholders of *West New-Jersey*; and that no Person shall be capable of being elected a Representative by the Freeholders of either Division, or afterwards of sitting in General Assemblies, who shall not have one Thousand Acres of Land of an Estate of Freehold, in his own Right, within the Division, for which he shall be chosen; and that no Freeholder shall be capable of voting in the Election of such Representative, who shall not have one Hundred Acres of Land of an Estate of Freehold in his own Right, within the Division for which he shall so Vote: And that this Number of Representatives shall not be enlarged or diminished, or the manner of electing them altered, otherwise than by an Act or Acts of the General Assembly there, and confirmed by the Approbation of us, our Heirs and Successors.

16. You are with all convenient speed to cause a Collection to be made of all the Laws, Orders, Rules, or such as have hitherto served or been reputed as Laws amongst the Inhabitants of our said Province of *Nova-Cæsarea* or *New-Jersey*, and together with our aforesaid Council and Assembly, you are to revise, correct, and amend the same, as may be necessary; and accordingly to enact such and so many of them, as by you with the Advice of our said Council and Assembly, shall be judged proper and conducive to our Service, and the welfare of our said Province, that they may be transmitted unto us, in authentick Form, for our Approbation or Disallowance.

17. You are to observe in the passing of the said Laws, and of all other Laws, that the Stile enacting the same, be by the Governor, Council and Assembly, and no other.

18. You are also as much as possible to observe in the passing of all Laws, that whatever may be requisite upon each different Matter, be accordingly provided for by a different Law, without intermixing in one and the same Act, such Things as have no proper Relation to each other; and you are especially to take care that no Clause or Clauses be inserted in, or annexed to any Act which shall be Foreign to what the Title of such respective Act imports.

19. You are to transmit authentic Copies of the fore-mentioned Laws that shall be Enacted, and of all Laws, Statutes, and Ordinances which shall at any Time hereafter be made or enacted within our said Province, each of them separately, under the publick Seal, unto us and our said Commissioners for Trade and Plantations, within three Months or by the first opportunity after their being Enacted, together with Duplicates thereof by the next Conveyance, upon pain of our high displeasure, and of the forfeiture of that Years Salary, wherein you shall at any Time, or upon any pretence whatsoever, omit to send over the said Laws, Statutes and Ordinances as aforesaid, within the Time above limited, as also of such other Penalty as we shall please to inflict. But if it shall happen that during Time of War, no Shipping shall come from our said Province or other our adjacent or neighbouring Plantations, within three Months after the making such Laws, Statutes and Ordinances, whereby the same may be transmitted as aforesaid, then the said Laws, Statutes, and Ordinances

are to be so transmitted as aforesaid, by the next conveyance after the making thereof, whenever it may happen, for our Approbation or Disallowance of the same.

20. You are to take care that in all Acts or Orders, to be passed within that our Province, in any Case for levying Money or imposing Fines and Penalties, express mention be made that the same is granted or reserved for Us, our Heirs or Successors for the publick Uses of that our Province, and the Support of the Government thereof, as by the said Act or Orders shall be directed.

21. And we do particularly require and command, that no Money, or value of Money whatsoever, be given or granted by any Act or Order of Assembly, to any Governor, Lieutenant Governor, or Commander in Chief of our said Province, which shall not according to the Stile of Acts of Parliament in *England*, be mentioned to be given and granted unto Us, with the humble desire of such Assembly, that the same be applied to the Use and Behoof of such Governor, Lieutenant Governor, or Commander in Chief, if we shall so think fit; or if we shall not approve of such Gift or Application, that the said Money or Value of Money be then disposed of and appropriated to such other Uses as in the said Act or Order shall be mentioned, and that from the Time the same shall be raised, it remain in the Hands of the Receiver of our said Province until our Royal Pleasure shall be known therein.

22. You shall also propose with the said General Assembly, and use your utmost endeavours with them, that an Act be passed for raising and settling a publick Revenue for defraying the necessary Charges of the Govern-

ment of our said Province, in which Provision be particularly made for a competent Salary to yourself, as Captain General and Governor in Chief of our said Province, and to other our succeeding Captain Generals, for supporting the Dignity of the said Office, as likewise due Provision for the Salaries of the respective Members of our Council and Assembly, and all other Officers necessary for the Administration of that Government.

23. Whereas it is not reasonable that any of our Colonies or Plantations should by virtue of any Exemptions or other Privileges whatsoever, be allowed to seek and pursue their own particular Advantages, by methods tending to undermine and prejudice our other Colonies and Plantations, which have equal Title to our Royal Care; and whereas the Trade and Welfare of our Province of *New-York*, would be greatly prejudiced, if not intirely ruined, by allowing unto the Inhabitants of *Nova Cæsarea*, or *New-Jersey*, any Exemption from those Charges, which the Inhabitants of *New-York* are liable to, you are therefore in the settling of a Publick Revenue as before directed, to propose to the Assembly, that such Customs, Duties and other Impositions be laid upon all Commodities imported or exported in or out of our said Province of *Nova Cæsarea*, or *New-Jersey*, as may equal the Charge that is or shall be laid upon the like Commodities in our Province of *New-York*.

24. And whereas we are willing in the best manner to provide for the Support of the Government of our said Province, by setting a Part sufficient allowances to such as shall be our Governor or Commander in Chief, residing for the Time being within the same. Our Will and Pleasure therefore is, that when it shall happen, that you shall be

absent from the Territories of *New-Jersey* and *New-York*, of which we have appointed you Governor, one full Moiety of the Salary and of all Perquisites and Emoluments whatsoever, which would otherwise become due unto you, shall, during the Time of your absence from the said Territories, be paid and satisfied unto such Governor or Commander in Chief who shall be resident upon the Place for the Time being, which we do hereby order and allot unto him towards his Maintenance, and for the better Support of the Dignity of that our Government.

25. Whereas great Prejudices may happen to our Service and the Security of our said Province under your Government by your absence from those Parts, without a sufficient Cause and especial Leave from us ; for prevention thereof, you are not upon any pretence whatsoever to come to *Europe* from your Government, without first having obtained Leave for so doing, under our Signet and Sign Manual, or by our Order in our privy Council.

26. You are not to permit any Clause whatsoever to be inserted in any Law for the levying Money, or the value of Money, whereby the same shall not be made liable to be accounted for unto us here in *England*, and to our high Treasurer, or to our Commissioners of our Treasury for the Time being.

27. You are to take care that fair Books of Accounts of all Receipts and Payments of all such Money be duly kept, and the Truth thereof attested upon Oath, and that the said Books be transmitted every half Year, or oftener, to our High Treasurer or to our Commissioners of our Treasury for the Time being, and to our Commissioners for Trade and Plantations, and Duplicates thereof by the next

Conveyance ; in which Books shall be specified, every particular Sum raised or disposed of, together with the Names of the Persons to whom any Payment shall be made, to the End we may be satisfied of the right and due Application of the Revenue of our said Province.

28. You are not to suffer any publick Money whatsoever, to be issued or disposed of otherwise than by Warrant under your Hand, by and with the Advice and Consent of our said Council ; but the Assembly may be nevertheless permitted from Time to Time to view and examine the Accounts of Money, or value of Money, disposed of by Virtue of Laws made by them, which you are to signify unto them as there shall be occasion.

29. And it is our express Will and Pleasure, that no Law for raising any Imposition on Wines or other strong Liquors, be made to continue for less than one whole Year : as also that all Laws whatsoever for the good Government and support of our said Province, be made indefinite, and without Limitation of Time, except the same be for a temporary End, which shall expire and have its full effect within a certain Time.

30. And therefore you shall not re-enact any Law which shall have been once enacted there by you, except upon very urgent Occasions, but in no case more than once without our express consent.

31. You shall not permit any Act or Order to pass in our said Province, whereby the Price or Value of the Current Coin within your Government, (whether it be Foreign or belonging to our Dominions) may be altered, without our particular Leave or Direction for the same.

32. And you are particularly not to pass any Law or do any Act, by Grant, Settlement, or otherwise, whereby our Revenue, after it shall be settled, may be lessened or impaired, without our especial leave or Commands therein.

33. You shall not remit any Fines or Forfeitures whatsoever, above the Sum of *Ten Pounds*, nor dispose of any Escheats, Fines or Forfeitures whatsoever, until upon signifying unto our High Treasurer, or to our Commissioners of our Treasury for the Time being, and to our Commissioners for Trade and Plantations, the Nature of the Offence and the Occasion of such Fines, Forfeitures or Escheats, with the particular Sums or Value thereof, (which you are to do with all speed) you shall have received our Directions therein, but you may in the mean Time suspend the Payment of the said Fines and Forfeitures.

34. You are to require the Secretary of our said Province, or his Deputy for the Time being, to furnish you with Transcripts of all such Acts and publick Orders as shall be made from Time to Time, together with a Copy of the Journals of the Council, to the End the same may be transmitted unto us, and to our Commissioners for Trade and Plantations as above directed, which he is duly to perform upon pain of incurring the forfeiture of his Place.

35. You are also to require from the Clerk of the Assembly, or other proper Officer, Transcripts of all the Journals, and other Proceedings of the said Assembly, to the End the same may in like manner be transmitted as aforesaid.

36. Our Will and Pleasure is, that for the better quieting the Minds of our good Subjects, Inhabitants of our said

Province, and for settling the Properties and Possessions of all Persons concerned therein, either as General Proprietors of the Soil under the first original Grant of the said Province, made by the late King *Charles* the Second, to the late Duke of *York*, or as particular Purchasers of any Parcels of Land from the said General Proprietors, you shall propose to the General Assembly of our said Province, the passing of such Act or Acts, whereby the Right and Property of the said General Proprietors, to the Soil of our said Province, may be confirmed to them, according to their respective Rights and Title; together with all such Quit-Rents as have been reserved, or are or shall become due to the said General Proprietors, from the Inhabitants of our said Province; and all such Priviledges as are express in the Conveyances made by the said Duke of *York*, excepting only the Right of Government, which remains in us: And you are further to take care, that by the said Act or Acts so to be passed, the particular Titles and Estates of all the Inhabitants of that Province, and other Purchasers claiming under the said General Proprietors, be confirmed and settled as of Right does appertain, under such Obligations as shall tend to the best and speediest Improvement or Cultivation of the same. PROVIDED ALWAYS, that you do not consent to any Act or Acts, to lay any Tax upon Lands that lye unprofitable.

37. You shall not permit any other Person or Persons beside the said General Proprietors, or their Agents, to Purchase any Land whatsoever from the Indians within the Limits of their Grant.

38. You are to permit the Surveyors and other Persons appointed by the forementioned General Proprietors of the Soil of that Province, for Surveying and Recording

the Surveys of Land granted by and held of them, to execute accordingly their respective Trusts: And you are likewise to permit, and if need be, aid and assist such other Agent or Agents, as shall be appointed by the said Proprietors for that End, to collect and receive the Quit-Rents which are or shall be due unto them, from the particular Possessors of any Parcels or Tracts of Land from Time to Time, PROVIDED ALWAYS, that such Surveyors, Agents or other Officers appointed by the said General Proprietors, do not only take proper Oaths, for the due Execution and Performance of their respective Offices or Employments, and give good and sufficient Security for their so doing, but that they likewise take the Oaths appointed by Act of Parliament to be taken instead of the Oaths of Allegiance and Supremacy, and the Oath mentioned in the aforesaid Act, entitled, *An Act to declare the Alteration in the Oath appointed to be taken by the Act, entitled, An Act for the further Security of his Majesty's Person, and the Succession of the Crown in the Protestant Line, and for extinguishing the hopes of the pretended Prince of Wales, and all other Pretenders, and their open and Secret Abettors, and for declaring the Association to be determined.* As also the forementioned Test. And you are more particularly to take care that all Lands Purchased from the said Proprietors, be cultivated and improved, by the Possessors thereof.

39. You shall transmit unto us, and to our Commissioners for Trade and Plantations, by the first Opportunity, a Map with the exact Description of our whole Territory under your Government, and of the several Plantations that are upon it.

40. You are likewise to send a List of Officers employed under your Government, together with all publick Charges.

41. You shall not displace any of the Judges, Justices, Sheriffs, or other Officers or Ministers within our said Province, without good and sufficient Cause to be signified unto us, and to our said Commissioners for Trade and Plantations, and to prevent arbitrary removal of Judges and Justices of the Peace, you shall not express any Limitation of Time in the Commissions which you are to grant, with the Advice and Consent of the Council of our said Province, to Persons fit for those Employments, nor shall you execute yourself, or by Deputy, any of the said Offices, nor suffer any Persons to execute more Offices than one by Deputy.

42. Whereas we are given to understand that there are several Offices within our said Province granted under the great Seal of *England*, and that our Service may be very much prejudiced by reason of the Absence of the Patentees, and by their appointing Deputies not fit to officiate in their stead, you are therefore to inspect the said Offices, and to inquire into the Capacity and Behaviour of the Persons now exercising them, and to report thereupon to us, and to our Commissioners for Trade and Plantations, what you think fit to be done or altered in relation thereunto; and you are upon the misbehaviour of any of the said Patentees, or their Deputies, to suspend them from the Execution of their Places, till you shall have represented the whole matter and received our Directions therein; but you shall not by colour of any Power or Authority hereby or otherwise granted or mentioned to be granted unto you, take upon you to give, grant or dispose of any Office or

Place within our said Province, which now is or shall be granted under the Great Seal of *England*, and further then that you may upon the vacancy of any such Office or Place, or Suspension of any such Officer by you as aforesaid, put in any fit Person to officiate in the Intervall till you shall have represented the Matter unto us, and to our Commissioners for Trade and Plantations as aforesaid (which you are to do by the first opportunity) and till the said Office or Place be disposed of by us, our Heirs or Successors, under the Great Seal of *England*, or that our further Directions be given therein.

43. In Case of any Goods, Money or other Estate of Pirates, or Piratically taken, shall be brought in, or found within our said Province of *Nova-Casaria*, or *New-Jersey*, or taken on Board any Ships or Vessels, you are to cause the same to be seized and secured until you shall have given us an Account thereof, and receive our Pleasure concerning the disposal of the same: But in case such Goods or any part of them are perishable, the same shall be publickly sold and disposed of, and the produce thereof in like manner secured until our further Orders.

44. And whereas Commissions have been granted unto several Persons in our respective Plantations in *America*, for the trying of Pirates in those Parts, pursuant to the Act for the more effectual Suppression of Piracy, and by a Commission already sent to our Province of *New-York*, you (as Captain General and Governor in Chief of our said Province of *New-York*) are impowered, together with others therein mentioned, to proceed accordingly in reference to our Provinces of *New-York*, *New-Jersey*, and *Connecticut*; our Will and Pleasure is, that in all Matters relating to Pirates, you Govern yourself according to the

intent of the Act and Commission aforementioned ; but whereas Accessories in Cases of Piracy beyond the Seas, are by the same Act left to be tryed in *England*, according to the Statute of the Second of King *Henry the Eighth*, We do hereby further direct and require you to send all such accessories in Cases of Piracy in our aforesaid Province of *Nova-Casarea*, or *New-Jersey*, with the Proper Evidences that you may have against them, into *England*, in order to their being tryed here.

45. You shall not erect any Court or Office of Judicature, not before erected or established, without our especial Order.

46. You are to transmit unto us, and to our Commissioners for Trade and Plantations, with all convenient speed, a particular account of all Establishments of Jurisdictions, Courts, Offices, and Officers, Powers, Authorities, Fees, and Privileges which shall be granted or settled within the said Province, by Virtue, and in pursuance of our Commission and Instructions to you our Captain General and Governor in chief of the same, to the End you may receive our further Directions therein.

47. And you are with the Advice and Consent of our said Council, to take especial care, to regulate all Salaries and Fees belonging to Places, or paid upon Emergencies, that they may be within the Bounds of Moderation, and that no Exaction be made on any Occasion whatsoever ; as also that Tables of all Fees be publickly hung up in all Places where such Fees are to be paid ; and you are to transmit Copies of all such Tables of Fees to us, and to our Commissioners for Trade and Plantations as aforesaid.

48. Whereas it is necessary that our Rights and Dues be preserved and recovered, and that speedy and effectual Justice be administered in all Cases relating to our Revenue, you are to take Care that a Court of Exchequer be called and do meet at all such Times as shall be needfull, and you are to inform us and our Commissioners for Trade and Plantations, whether our Service may require, that a constant Court of Exchequer be settled and established there.

49. You are to take Care that no Man's Life, Member, Freehold, or Goods be taken away or harmed in our said Province, otherwise then by established and known Laws, not repugnant to, but as much as may be agreeable to the Laws of *England*.

50. You shall administer, or cause to be administered, the Oaths appointed by Act of Parliament to be taken instead of the Oaths of Allegiance and Supremacy, and the Oath mentioned in the aforesaid Act, entitled, *An Act to declare the Alteration in the Oath appointed to be taken, by the Act, entitled, An Act for the further Security of his Majesty's Person, and the Succession of the Crown in the Protestant Line and for extinguishing the hopes of the pretended Prince of Wales, and all other Pretenders, and their open and Secret Abettors, and for declaring the Association to be determined*, as also the forementioned Test, to the Members and Officers of the Council and Assembly, and to all Judges, Justices, and all other Persons that hold any Office or Place of Trust or Profit in the said Province, whether by Virtue of any Patent under our Great Seal of *England*, or otherwise, without which you are not to admit any Person whatsoever into any publick Office, nor suffer those who have been admitted formerly to continue therein.

51. You are to permit a Liberty of Conscience to all Persons (except Papists) so they may be contented with a quiet and peaceable Enjoyment of the same, not giving Offence or Scandal to the Government.

52. And whereas we have been informed that divers of our good Subjects inhabiting those Parts, do make a religious scruple of Swearing, and by Reason of their refusing to take an Oath in Courts of Justice and other Places, are or may be liable to many inconveniencies, our Will and Pleasure is, that in Order to their ease in what they conceive to be matter of Conscience, so far as may be consistent with good Order and Government, you take Care that an Act be passed in the General Assembly of our said Province, to the like effect as that past here in the 7th and 8th Year of his Majesty's Reign, entitled, *An Act, that the Solemn Affirmation and Declaration of the People called Quakers, shall be accepted, instead of an Oath in the usual form*, and that the same be transmitted to us, and to our Commissioners for Trade and Plantations as before directed.

53. And whereas we have been further informed, that in the first Settlement of the Government of our said Province, it may so happen that the Number of Inhabitants fitly qualified to serve in our Council, in the General Assembly, and in other Places of Trust or Profit there, will be but small; it is therefore our Will and Pleasure, that such of the said People called *Quakers*, as shall be found capable of any of those Places or Employments, and accordingly be elected or appointed to serve therein, may upon their taking and signing the Declaration of Allegiance, to us in the form used by the same People here in *England*, together with a Solemn Declaration for true dis-

charge of their respective Trusts, be admitted by you into any of the said Places or Employments.

You shall send an Account unto us, and to our Commissioners for Trade and Plantations, of the present Number of Planters and Inhabitants, Men, Women and Children, as well Masters as Servants, free and unfree, and of the Slaves in our said Province, as also a Yearly account of the Increase or Decrease of them, and how many of them are fit to bear Arms in the Militia of our said Province.

You shall also cause an Account to be kept of all Persons Born, Christened and Buried, and you shall Yearly send fair abstracts thereof to us, and to our Commissioners for Trade and Plantations as aforesaid.

You shall take care that all Planters and Christian Servants, be well and fitly provided with Arms, and that they be listed under good Officers, and when, and as often as shall be thought fit, Mustered and Trained, whereby they may be in a better readiness for the Defence of our said Province under your Government, and you are to endeavour to get an Act past, (if not already done) for apportioning the number of white Servants to be kept by every Planter.

You are to take especial care, that neither the frequency, nor unreasonableness of their Marches, Musters, and Trainings, be an unnecessary Impediment to the affairs of the Inhabitants.

You shall not, upon any Occasion whatsoever, establish, or put in Execution any Articles of War, or other

Law Martial, upon any of our Subjects, Inhabitants of our said Province, without the Advice and consent of our Council there.

And whereas there is no Power given you by your Commission, to execute Martial Law in Time of Peace upon Soldiers in pay, and that nevertheless it may be Necessary that some care be taken for the keeping of good Discipline amongst those, that we may at any Time think fit to send into our said Province, (which may properly be provided for by the Legislative Power of the same) you are therefore to recommend to the General Assembly of our said Province, that they prepare such Act or Law for the Punishing of Mutiny, Desertion, and false Musters, and for the better preserving of good discipline amongst the said Soldiers, as may best answer those Ends.

And whereas upon Complaints that have been made of the irregular Proceedings of the Captains of some of our Ships of War, in the pressing of Seamen in several of our Plantations, we have thought fit to order, and have given Directions to our High Admiral accordingly, that when any Captain or Commander of any of our Ships of War, in any of our said Plantations, shall have Occasion for Seamen to serve on board of Ships under their Command, they do make their Applications to the Governörs, and Commanders in Chief, of our Plantations respectively, to whom, as Vice Admirals, we are pleased to commit the sole Power of impressing Seamen in any of our Plantations in *America*, or in sight of any of them; you are therefore hereby required upon such Application made to you, by any of the Commanders of our said Ships of War within our Province of *Nova-Cæsarea*, or *New-Jersey*, to take care that our said Ships of War be furnished with a num-

ber of Seamen that may be necessary for our Service on board them from Time to Time.

And whereas together with other Powers of Vice Admiralty, you will receive Authority from our dearest Husband Prince George of *Denmark*, our High Admiral of *England*, and of our Plantations, upon the Refusal or Neglect of any Captain or Commander of any of our Ships of War, to execute the written Orders he shall receive from you for our Service, and the Service of our Province under your Government, or upon his negligent, or undue execution thereof, to suspend him, such Captain or Commander from the Exercise of his said Office of Captain or Commander, and to commit him into safe Custody, either on board his own Ship or elsewhere, at your Discretion, in order to his being brought to answer for such Refusal or Neglect, by Commission either under our Great Seal of *England*, or from our High Admiral, or our Commissioners for executing the Office of our High Admiral of *England* for the Time being.

And whereas you will likewise receive Directions from our said Dearest Husband, as our High Admiral of *England*, and of our Plantations, that the Captain or Commander, so by you suspended, shall during such his Suspension and Commitment be succeeded in his said Office by such Commission or Warrant Officer of our said Ship, appointed by our said High Admiral of *England*, or by our Commissioners for executing the Office of our High Admiral of *England* for the Time being, as by that known Practice and Discipline of our Navy, does and ought to succeed him next as in case of Death, Sickness, or other ordinary disability happening to the Commander of any of our Ships of War and not otherwise; you standing also accountable for

the Truth and Importance of the Crime and Misdemeanour, for which you shall so proceed to the suspending of such our Captain or Commander; you are not to exercise the said Power of suspending any such Captains or Commanders of our Ships of War, otherwise then by virtue of such Commission or Authority from our said High Admiral; any former Custom or Usage notwithstanding.

Whereas it is absolutely necessary, that we be exactly informed of the State of Defence of all our Plantations in *America*, as well in relation to the Stores of War, that are in each Plantation, as to the Forts and Fortifications there, and what more may be necessary to be built for the Defence and Security of the same, you are so soon as possible to prepare an Account thereof, with relation to our said Province of *Nova-Cæsarea*, or *New-Jersey*, in the most particular manner; and you are therein to express the present state of the Arms, Ammunition and other Stores of War, either in any publick Magazines, or in the Hands of private Persons, together with the state of all Places either already fortified, or that you judge necessary to be fortified for the Security of our said Province; and you are to transmit the said Account to us, and to our Commissioners for Trade and Plantations by the first opportunity, and other like Accounts Yearly in the same Manner.

And that we may be the better informed of the Trade of our said Province, you are to take especial care that due Entries be made in all Ports in our said Province, of all Goods and Commodities, their Species or Quantities Imported or Exported from thence, with the Names, Burden, and Guns of all Ships importing and exporting the same, also the Names of their Commanders, and likewise expressing from and to what Places the said Ships do come and

go, a Copy whereof the Naval Officer is to furnish you with, and you are to transmit the same unto us, our High Treasurer or our Commissioners of our Treasury for the Time being, and to our Commissioners for Trade and Plantations Quarterly, and Duplicates thereof by the next conveyance.

And whereas great losses have been sustained by our Subjects, Trading to our Plantations in *America*, by Ships sailing from those Parts without Convoy, or without the Company of other Ships, which might protect them from our Enemies, by which means many of them have been taken by the French in their return to *England*; to the end therefore the Ships of our Subjects may be the better secured in their return home, you are to take care that during this Time of War, no Ships Trading to our Province of *Nova-Cæsarea*, or *New-Jersey*, be permitted to come from thence to *England*, but in Fleets, or under Convoy or Protection of some of our Ships of War, or at such a Time as you shall receive Notice from hence, of their meeting such Convoys, as may be appointed for the bringing them safe to some of our Ports in this Kingdom; and in case of any Danger, you are to expect Directions from hence, what Precautions shall be further necessary for their Security.

You are likewise to examine what Rates and Duties are charged and payable upon any Goods Imported or Exported within our Province of *Nova-Cæsarea*, or *New-Jersey*, whether of the Growth or Manufacture of the said Province or otherwise, and to use your best endeavours for the Improvement of the Trade in those Parts.

And whereas Orders have been given for the Commissioning of fit Persons to be Officers of our Admiralty

and Customs in our several Plantations in *America*; and it is of great importance to the Trade of this Kingdom, and to the Welfare of all our Plantations, that illegal Trade be every where discouraged. You are therefore to take especial care, that the Acts of Trade and Navigation be duly put in Execution; and in Order thereunto, you are to give constant Protection and all due Encouragement to the said Officers of our Admiralty and Customs, in the Execution of their respective Offices and Trust within our Territories under your Government.

You are from Time to Time to give an Account as before directed, what Strength your bordering Neighbours have, be they Indians or others, by Sea and Land, and of the Condition of their Plantations, and what Correspondence you do keep with them.

You shall take especial care, that God Almighty be devoutly and duly served throughout your Government, the Book of Common Prayer as by Law established read each Sunday, and Holy-day, and the Blessed Sacrament administered according to the Rights of the Church of *England*.

You shall be careful that the Churches already built there, be well and orderly kept, and that more be built, as the Colony shall by God's blessing be improved; and that besides a competent maintainance to be assigned to the Minister of each Orthodox Church, a convenient House be built at the common Charge for each Minister, and a competent Proportion of Land, assigned to him, for a Glebe and exercise of his industry.

And you are to take care, that the Parishes be so limited and settled, as you shall find most convenient, for the accomplishing this good Work.

You are not to prefer any Minister to any ecclesiastical Benefice in that our Province, without a Certificate from the Right Reverend Father in God the Lord Bishop of *London*, of his being conformable to the Doctrine and Discipline of the Church of *England*, and of a good Life and Conversation: And if any Person already preferr'd to a Benefice shall appear to you, to give scandal either by his Doctrine or Manners, you are to use the best means for the Removal of him, and to supply the Vacancy in such manner as we have directed.

You are to give Order, that every Orthodox Minister within your Government, be one of the Vestry in his respective Parish, and that no Vestry be held without him, except in case of Sickness, or that after the Notice of a Vestry summon'd, he omit to come.

You are to enquire whether there be any Minister within your Government, who preaches and administers the Sacrament in any Orthodox Church or Chappel, without being in due Orders, and to give account thereof to the said Lord Bishop of *London*.

And to the End the Ecclesiastical Jurisdiction of the said Lord Bishop of *London*, may take Place in our said Province, so far as conveniently may be, we do think fit that you give all Countenance and encouragement to the Exercise of the same, excepting only the collating to Benefices, granting Licences for Marriages, and Probate of Wills, which we have reserved to you our Governor, and the Commander in Chief of said Province for the Time being.

And you are to take especial Care that a Table of Marriages established by the Canons of the Church of *Eng-*

land, be hung up in every Orthodox Church, and duly observed, and you are to endeavour to get a Law passed in the Assembly of our said Province, (if not already done,) for the strict Observation of the said Table.

You are to take care that Drunkenness and Debauchery, Swearing and Blasphemy, be discountenanced and punished: And for the further discountenance of Vice, and Encouragement of Virtue and good living, (that by such example the Infidels may be invited and Desire to partake of the Christian Religion) you are not to admit any Person to publick Trusts and Employments in our said Province, under your Government, whose ill Fame and Conversation may occasion Scandal.

You are to suppress the engrossing of Commodities as tending to the prejudice of that freedom which Commerce and Trade ought to have, and to settle such Orders and Regulations therein, with the Advice of the Council, as may be most conducive to the Benefit and Improvement of that Colony.

You are to give all due Encouragement and Invitation to Merchants and others, who shall bring Trade unto our said Province, or any way contribute to the advantage thereof, and in particular the Royal African Company of *England*.

And whereas we are willing to recommend unto the said Company, that the said Province may have a constant and sufficient supply of Merchantable Negroes, at moderate Rates, in Money or Commodities, so you are to take especial Care, that Payment be duly made, and within a competent time according to their Agreements.

And you are to take care that there be no trading from our said Province to any Place in *Africa*, within the Charter of the *Royal African Company*, otherwise than prescribed by an Act of Parliament, entitled, *An Act to settle the Trade to Africa*.

And you are Yearly to give unto us, and to our Commissioners for Trade and Plantations, an Account of what Number of Negroes, our said Province is yearly supplied with, and at what Rates.

You are likewise from Time to Time, to give unto us, and to our Commissioners for Trade and Plantations as aforesaid, an account of the Want and Defects of our said Province, what are the chief Products thereof, what new Improvements are made therein by the Industry of the Inhabitants or Planters, and what further Improvements you conceive may be made, or Advantages gained by Trade, and in what manner we may best advance the same.

You are not to grant Commissions of Marque or Reprizals, against any Prince or State, or their Subjects in Amity with us, to any Person whatsoever without our especial Command.

Our Will and Pleasure is, that Appeals be made in Cases of Error from the Courts in our said Province of *Nova-Cesarea*, or *New-Jersey*, unto you and the Council there; and in your absence from our said Province, to our Commander in Chief for the Time being, and our said Council, in civil Causes, wherein such of our said Council as shall be at that Time Judges of the Court from whence such Appeal shall be made to you our Governor, and Council, or to the Commander in Chief for the Time being, and

Council as aforesaid, shall not be admitted to vote upon the said Appeal, but they may nevertheless be present at the hearing thereof, to give the Reasons of the Judgment given by them, in the Cause wherein such Appeal shall be made. PROVIDED NEVERTHELESS, that in all such Appeals, the Sum or Value appealed for exceed *one Hundred Pounds* Sterling, and that Security be first duly given by the Appellant to Answer such Charges as shall be awarded in Case the first Sentence be affirmed.

And if either Party shall not rest satisfied with the Judgment of you, or the Commander in Chief for the Time being, and Council as aforesaid, Our Will and Pleasure is, that they may then appeal unto us, in our privy Council, provided the Sum or Value so appealed for unto us, do exceed *two Hundred Pounds* Sterling, and that such Appeal be made within Fourteen Days after Sentence; and that good Security be given by the Appellant, that he will effectually prosecute the same, and answer the Condemnation, as also pay such Costs and Damages as shall be awarded by us, in case the Sentence of you, or the Commander in Chief for the Time being, and Council, be affirmed. And Provided also, that Execution be not suspended by reason of any such Appeal to us.

You are also to permit Appeals to us in Council, in all Cases of Fines imposed for Misdemeanours; provided the Fines so imposed, amount to or exceed the value of *two Hundred Pounds*, the Appellant first giving good Security, that he will effectually Prosecute the same, and Answer the Condemnation, if the Sentence by which such Fine was imposed in our said Province of *Nova-Cæsarea*, or *New-Jersey*, shall be confirmed.

You are for the better Administration of Justice, to endeavour to get a Law passed (if not already done) wherein shall be set the value of Men's Estates, either in Goods or Lands, under which they shall not be capable of serving as Jurors.

You shall endeavour to get a Law past for the restraining of any inhuman Severity, which by ill Masters or Overseers, may be used towards their Christian Servants, and their Slaves, and that Provision be made therein, that the wilfull killing of Indians and Negroes may be punished with Death, and that a fit Penalty be imposed for the maiming of them.

You are also with the Assistance of the Council and Assembly, to find out the best means to facilitate and encourage the Conversion of Negroes and Indians, to the Christian Religion.

You are to endeavour with the Assistance of the Council, to provide for the raising of Stocks, and building of publick Work-houses, in convenient Places, for the employing of poor and indigent people.

You are to propose an Act to be past in the Assembly, whereby the Creditors of Persons becoming Bankrupts in *England*, and having Estates in our aforesaid Province of *New-Jersey*, may be relieved and satisfied for the Debts owing them.

You are to encourage the Indians upon all Occasions so as they may apply themselves to the *English* Trade and Nation, rather than to any other of Europe.

And whereas the preservation of the Northern Frontiers of our Province of *New-York*, against the Attempts of any Enemy by Land, is of great Importance to the Security of our Northern Plantations on the Continent of *America*, and more especially of our said Province of *New-Jersey*, which lyes so near adjoining to our Province of *New-York*; and the charge of erecting and repairing the Fortifications, and of maintaining the soldiers necessary for the defence of the same, as too great to be borne by the single Province of *New-York*, without due Contributions from others concerned therein, for which reason, we have upon several Occasions, required such Contributions to be made, and accordingly settled a quota to regulate the Proportions thereof; you are therefore to take further Care, to dispose the General Assembly of our said Province of *New-Jersey*, to the raising of such other Supplies, as are or may be necessary for the Defence of our Province of *New-York*, according to the Signification of our Will and Pleasure therein, which has already been made to the Inhabitants of *New-Jersey*, or which shall at any Time hereafter be made to you our Governor, or to the Commander in Chief of our said Province for the Time being.

And in Case of any Distress of any of our Plantations, you shall upon Application of the respective Governors to you, assist them with what aid the condition and safety of your Government will permit, and more particularly in case our Province of *New-York*, be at any Time attacked by an Enemy, the Assistance you are to contribute towards the defence thereof, whether in Men or Money is according to the forementioned Quota or Repartition which has already been signified to the Inhabitants of our foresaid Province under your Government, or according to

such other Regulation as we shall hereafter make in that behalf, and signify to you or the Commander in Chief of our said Province, for the Time being.

And for the greater Security of our Province of *New-Jersey*, you are to appoint fit Officers and Commanders, in the several Parts of the Country bordering upon the Indians, who upon any Invasion may raise Men and Arms to oppose them, until they shall receive your Directions therein.

And whereas we have been pleased by our Commission to direct, that in case of your Death or Absence from our said Province, and in case there be at that Time no Person upon the Place commissioned or appointed by us to be our Lieutenant Governor, or Commander in Chief, the then present Council of our said Province, shall take upon them the Administration of the Government, and execute our said Commission, and the several Powers and Authorities therein contained in the manner therein directed; it is nevertheless our express Will and Pleasure, that in such case the said Council shall forbear to pass any Acts, but what are immediately necessary for the Peace and Welfare of our said Province, without our particular Order for that Purpose.

You are to take care that all Writs be issued in our Name throughout our said Province.

Forasmuch as great Inconveniencies may arise by the Liberty of Printing in our said Province, you are to provide by all necessary Orders, that no Person keep any Press for printing, nor that any Book, Pamphlet or other

Matters whatsoever be printed without your especial Leave and Licence first obtained.

And if any thing shall happen that may be of advantage and security to our said Province, which is not herein, or by our Commission to you provided for, we do hereby allow unto you, with the Advice and Consent of our Council of our said Province, to take order for the present therein, giving unto us by one of our Principal Secretaries of State, and to our Commissioners for Trade and Plantations, speedy Notice thereof, that so you may receive our Ratification if we shall approve of the same.

PROVIDED ALWAYS, that you do not by any colour of any Power or Authority hereby given you, Commence or Declare War, without our Knowledge and particular Commands therein, except it be against Indians, upon emergencies, wherein the consent of our Council shall be had, and speedy Notice given thereof unto us as aforesaid.

And you are upon all occasions to send unto us by one of our principal Secretaries of State, and to our Commissioners for Trade and Plantations, a particular account of all your Proceedings and of the Condition of Affairs within your Government.

And whereas the Lords Spiritual and Temporal in Parliament, upon Consideration of the great abuses practised in the Plantation Trade, did by an humble Address represent to his late Majesty, the great Importance it is of both to this our Kingdom and to our Plantations in *America*, that the many good Laws which have been made for the Government of the said Plantations, and particularly the Act passed in the seventh and eighth Years of his said Majesty's

Reign, entitled, *An Act for preventing Frauds, and regulating abuses in the Plantation Trade*, be strictly observed. You are therefore to take Notice, that whereas notwithstanding the many good Laws made from Time to Time, for preventing Frauds in the Plantation Trade, it is nevertheless manifest, that very great Abuses have been and continue still to be practised to the prejudice of the same; which abuses must needs arise, either from the Insolvency of the Persons who are accepted for the Security, or from the Remissness or Connivance of such as have been or are Governors in the Several Plantations, who ought to take care that those Persons who give Bond should be duly prosecuted, in case of non performance; we take the good of our Plantations and the Improvement of the Trade thereof, by a strict and punctual observance of the several Laws in force concerning the same, to be of so great Importance to the Benefit of this our Kingdom, and to the advancing of the Duties of our Customs here, that if we shall be hereafter informed, that at any Time there shall be any failure in the due observance of those Laws, within our foresaid Province of *Nova-Cæsarea*, or *New-Jersey*, by any willful fault or neglect on your Part, we shall look upon it as Breach of the Trust reposed in you by us, which we shall punish with the loss of your Place in that Government, and such further Marks of our Displeasure, as we shall Judge reasonable to be inflicted upon you, for your Offence against us, in a Matter of this consequence that we now so particularly charge you with.

A True Copy.

Thomas Hill, *Secretary*.

LORD CORNBURY'S COMMISSION.

ANNE by the Grace of God of *England, Scotland, France and Ireland*, QUEEN, Defender of the Faith, &c. To our Trusty and well beloved, *Edward Hyde*, Esquire, commonly called Lord *Cornbury*, Greeting. Whereas in the Government of that Country, which was formerly granted by King *Charles* the Second, under the Name of *Nova-Cæsarea*, or *New-Jersey*, and which has since been subdivided by the Proprietors and called *East New-Jersey*, and *West New Jersey*, such Miscarriages have happened that the said Country is fallen into disorder and confusion, which has accordingly been represented to our dearest Brother the late King in several Petitions, Memorials and other Papers signed by the General Proprietors and by great numbers of the Inhabitants; and by means of that disorder the publick Peace and Administration of Justice, whereby the Properties of our Subjects should be preserved there, is interrupted and violated, and the Guard and Defence of that Country so totally neglected, that the same is in eminent danger of being lost from the Crown of *England*: And whereas the aforesaid Proprietors being sensible that the said Country and our good Subjects the Inhabitants thereof cannot be defended and secured by any other means then by our taking the Government of the same under our immediate Care, have executed and made a formal and entire Surrender of their Right or pretended Right and Title to the Government of that Country unto us, we therefore reposing especial trust and confidence in the Prudence, Courage and Loyalty of you the said Lord *Cornbury*, out of our especial Grace, certain Knowledge and mere Motion, have thought fit to constitute and ap-

point, and by these Presents do constitute and appoint you the said Lord *Cornbury*, to, be our Captain General and Governor in Chief, in and over the aforesaid Country of *Nova-Cæsared*, or *New-Jersey*, viz. the Division of *East* and *West New-Jersey*, in *America*, which we have thought fit to reunite into one Province, and settle under one entire Government: And we do hereby require and command you to do and execute all Things in due manner that shall belong unto your said Command, and the trust we have reposed in you, according to the several Powers and Directions granted or appointed you by this present Commission, and the Instructions and Authorities herewith given you, or by such further Powers, Instructions or Authorities as shall at any Time hereafter be granted, or appointed you under our Signet and Sign Manual, or by our Order in our privy Council, and according to such reasonable Laws and Statutes as shall be made and agreed upon by you, with the advice and consent of the Council and Assembly of our said Province, under your Government, in such manner and form as is hereafter expressed. And our Will and Pleasure is, that you the said Lord *Cornbury*, having, after the Proclamation of these our Letters Patents, first taken the Oaths appointed by Act of Parliament to be taken instead of the Oath of Allegiance and Supremacy, and the Oath mentioned in an Act, entitled, *An Act to declare the Alteration in the Oath appointed to be taken, by the Act; entitled, An Act for the further Security of his Majesty's Person, and the Succession of the Crown in the Protestant Line, and for the extinguishing the hopes of the Pretended Prince of Wales, and all other Pretenders and their open and secret Abettors, and for the declaring the Association to be determined.* As also the Test mentioned in the Act of Parliament made in the Twenty-fifth Year of

the Reign of King *Charles* the Second, entitled, *An Act for preventing Dangers which may happen from Popish Recusants*, together with the Oath for the due Execution of the Office and Trust of our Captain General and Governor in Chief, in and over our said Province of *Nova-Cæsarea*, or *New-Jersey*, as well with regard to the equal and impartial Administration of Justice, in all Causes that shall come before you, as otherwise, and likewise the Oath required to be taken by Governors of Plantations, to do the utmost that the Laws relating to the Plantations be observed; all which our Council in our said Province, or any three of the Members thereof, have hereby full Power and Authority, and are required to administer unto you, and in your absence our Lieutenant Governor, if there be any upon the Place: you shall administer unto each of the Members of our said Council, as also to our Lieutenant Governor, if there be any upon the Place, as well the Oath appointed by the Act of Parliament to be taken instead of the Oath of Allegiance and Supremacy, and the Oath mentioned in the said Act, entitled, *An Act to declare the Alteration in the Oath appointed to be taken by an Act*, entitled, *An Act for the further Security of his Majesty's Person, and the Succession of the Crown in the Protestant Line, and for extinguishing the hopes of the pretended Prince of Wales, and all other Pretenders, and their open and Secret Abettors, and for declaring the Association to be determined*; as the forementioned Test, and the Oath for the due execution of their Places and Trusts. And we do hereby give and grant unto you, full Power and Authority to suspend any of the Members of our said Council from sitting, voting, and assisting therein, if you shall see just cause for so doing: And if it shall at any Time happen that by the Death, Departure out of our said Province,

or Suspension of any of our said Councillors, or otherwise, there shall be wanting in our said Council, any three whereof we do appoint to be a Quorum, Our Will and Pleasure is, that you signify the same unto us, by the first opportunity, that we may under our Signet and Sign Manual constitute and appoint others in their stead; but that our affairs may not suffer at that instant, for want of a due Number of Councillors, if ever it should happen that there should be less than seven of them residing in our said Province, we do hereby give and grant unto you the said Lord *Cornbury*, full Power and Authority to chuse as many Persons out of the Principal Freeholders, Inhabitants thereof, as will make up the full number of our said Council to be seven, and no more, which persons so chosen and appointed by you, shall be to all Intents and Purposes Councillors in our said Province, until either they shall be confirmed by us, or that by the Nomination of others by us, under our Sign Manual and Signet, our said Council shall have seven or more Persons in it. And we do hereby give and grant unto you, full Power and Authority, with the advice and consent of our said Council from Time to Time, as need shall require, to summon and call General Assemblies of the Freeholders and Planters within your Government, in manner and form as shall be directed in our Instructions which shall be given you, together with this our Commission. Our Will and Pleasure is, that the Persons thereupon duly elected, by the Major part of the Freeholders of the respective Counties and Places so returned, and having before sitting, taken the Oaths appointed by Act of Parliament to be taken instead of the Oaths of Allegiance and Supremacy, and the Oath mentioned in the aforesaid Act, entitled, *An Act to declare the Alteration in the Oath appointed to be taken by the Act*, entitled, *An*

Act for the further Security of his Majesty's Person, and the Succession of the Crown in the Protestant Line, and for extinguishing the hopes of the pretended Prince of Wales, and all other Pretenders, and their open and secret Abettors, and for declaring the Association to be determined; as also the aforementioned Test: Which Oath you shall commissionate fit Persons under our Seal of Nova-Cæsarea, or New-Jersey, to administer unto them, and without taking of which Oaths and subscribing the said Test, none shall be capable of sitting though elected, shall be called and held the General Assembly of that our Province, and that you the said Lord Cornbury, by and with the Advice and Consent of our Council and Assembly, or the Major part of them respectively, shall have full Power and Authority to make, constitute, and ordain Laws, Statutes and Ordinances, for the publick Peace, Welfare, and good Government of our said Province, and of the People and Inhabitants thereof, and such others as shall report thereto, and for the Benefit of us, our Heirs, and Successors, which said Laws, Statutes, and Ordinances are not to be repugnant, but as near as may be agreeable unto the Laws and Statutes of this our Kingdom of England. Provided that all such Laws, Statutes and Ordinances of what nature or duration soever, be within three Months or sooner, after the making thereof, transmitted to us, under our Seal of Nova-Cæsarea, or New-Jersey, for our Approbation or Disallowance of them, as also Duplicates thereof by the next conveyance, or in case any or all of them being not before confirmed by us, shall at any Time be disallowed and not approved, and so signified by us, our Heirs or Successors, under our or their Sign Manual and Signet, or by Order of our or their privy Council, unto you the said Lord Cornbury, or to the Commander in Chief of our

said Province for the Time being, then such and so many of them as shall be disallowed and not approved shall from thenceforth cease, determine, and become utterly void and of none effect, any Thing to the contrary thereof notwithstanding. And to the end that nothing may be passed or done by our said Council or Assembly, to the prejudice of our Heirs and Successors, we will and ordain, that you the said Lord Cornbury, shall have and enjoy a Negative Power in the making and passing of all Laws, Statutes and Ordinances as aforesaid. And that you shall and may likewise from Time to Time, as you shall judge it necessary, adjourn, prorogue and dissolve all General Assemblies. Our Will and Pleasure is, that you shall and may use and keep the publick Seal of our Province of *Nova-Cæsarea*, or *New-Jersey*, for Sealing all Things whatsoever that pass the Great Seal of our said Province under your Government. And we do further give and grant unto you the said Lord Cornbury, full Power and Authority, from Time to Time, and at all Times hereafter, by yourself, or by any other to be authorized by you in that behalf, to administer and give the Oaths appointed by Act of Parliament, instead of the Oath of Allegiance and Supremacy, to all and every such Person and Persons as you shall think fit, who shall at any Time or Times pass into our said Province, or shall be resident or abiding there. And do further give and grant unto you, full Power and Authority, with the advice and consent of our said Council, to erect, constitute and establish such and so many Courts of Judicature and publick Justice within our said Province under your Government, as you and they shall think fit and necessary, for the hearing and determining of all Causes as well Criminal as Civil, according to Law and Equity, and for awarding execution thereupon with all reasonable and necessary

Powers, Authorities, Fees and Privileges belonging unto them; and also to appoint and commissionate fit Persons in the several Parts of your Government to administer the Oaths appointed by Act of Parliament to be taken instead of the Oath of Allegiance and Supremacy, and the Oath mentioned in the aforesaid Act, entitled, *An Act to declare the Alteration in the Oath to be taken by the Act, entitled, An Act for the further Security of his Majesty's Person, and the Succession of the Crown in the Protestant Line, and for the extinguishing the hopes of the pretended Prince of Wales, and all other Pretenders, and their open and secret Abettors, and for declaring the Association to be determined*; as also the Test, unto such Persons as shall be obliged to take the same. And we do hereby authorize and empower you to constitute and appoint Judges, and in Cases requisite, Commissioners of Oyer and Terminer, Justices of the Peace, and other necessary Officers and Magistrates in our said Province, for the better administration of Justice, and putting the Laws in Execution; and to administer, or cause to be administered unto them, such Oath or Oaths as are usually given for the due Execution and Performace of Offices and Places, and for the clearing of Truth in judicial Causes. And we do hereby give and grant unto you, full Power and Authority where you shall see Cause, or Judge any Offender or Offenders in Criminal Matters, or any fines or forfeitures due unto us, fit Objects of our Mercy, to pardon all such Offenders and to remit all such Offences, Fines and Forfeitures, Treasons and wilful Murder only excepted, in which case you shall likewise have Power upon extraordinary Occasions, to grant reprieves to the Offenders, until and to the Intent our Royal Pleasure may be known therein. And we do by these presents authorize and empower you to collate any Person

or Persons to any Churches, Chappels or other ecclesiastical Benefices within our said Province, as often as any of them shall happen to be void. And we do hereby give and grant unto you the said Lord *Cornbury*, by your self, and by your Captains and Commanders, by you to be authorized, full Power and Authority to levy, arm, muster, command and employ all Persons whatsoever residing within our said Province of *Nova-Cæsarea*, or *New-Jersey*, and as occasion shall serve them, to Transport from one place to another for the resisting and withstanding of all Enemies, Pirates, and Rebels, both at Sea and Land, and to Transport such Forces to any of our Plantations in *America*, if necessity shall require, for the defence of the same against the Invasion and attempts of any of our Enemies, Pirates and Rebels, if there shall be occasion to pursue and prosecute in or out of the Limits of our said Province and Plantations, or any of them; and if it shall please God them to vanquish, apprehend and take, and being taken either according to Law, to put to Death, or keep and preserve alive at your discretion, and to execute Martial Law, in time of Invasion, Insurrection or War, and to do and execute all and every other Thing and Things, which to any Captain General and Governor in Chief, doth or ought of right to belong. And we do hereby give and grant unto you full Power and Authority, by and with the Advice and Consent of our said Council, to erect, raise and build in our said Province of *Nova-Cæsarea*, or *New-Jersey*, such and so many Forts, Platforms, Castles, Cities, Burroughs, Towns, and Fortifications, as you by the Advice aforesaid, shall judge necessary, and the same, or any of them, to fortify and furnish with Ordinance, Ammunition, and all sorts of Arms fit and necessary for the Security and Defence of our said Province; and by the advice aforesaid, the same

or any of them again to demolish or dismantle as may be most convenient. And forasmuch as many Mutinies and Disorders may happen, by Persons shipped and employed at Sea during the Time of War, to the end that such as shall be shipped and employed at Sea during the Time of War, may be better governed and ordered, we do hereby give and grant unto you the said Lord *Cornbury*, full Power and Authority to constitute and appoint Captains, Lieutenants, Masters of Ships, and other Commanders and Officers, and to grant unto such Captains, Lieutenants, Masters of Ships, and other Commanders, and Officers, Commissions, to execute the Law Martial during the Time of War, and to use such Proceedings, Authorities, Corrections, Executions, upon any Offender or Offenders who shall be mutinous, seditious, disorderly, or any ways unruly at Sea, or during the Time of their abode or residence in any of the Ports, Harbours, or Quays of our said Province, as the cause shall be found to require according to Martial Law, during the Time of War as aforesaid. Provided, that nothing herein contained, shall be construed to the enabling you, or any by your Authority, to hold Plea or have any Jurisdiction of any Offence, Cause, Matter or Thing committed or done upon the High Sea, or within any of the Harbors, Rivers or Creeks of our said Province under your Government, by any Captain, Commander, Lieutenant, Master, Officer, Sea Man, Soldier, or other Person whatsoever, who shall be in actual Service and Pay, in or aboard any of our Ships of War, or the Vessel acting by immediate Commission or Warrant from our High Admiral of *England*, under the Seal of our Admiralty, or from the Commissioners for executing the Office of our High Admiral of *England* for the Time being, but that such Captain, Commander, Lieutenant, Master, Officers,

Sea Men, Soldiers, and other Persons offending, shall be left to be proceeded against as the Merit of their Offences shall require, either by Commission under our great Seal of *England*, as the Statute of the Twenty-eighth of King *Henry* the Eighth directs, or by Commission from our High Admiral of *England*, or from our Commissioners for executing the Office of our High Admiral of *England*, for the Time being, according to the Act of Parliament passed in the Thirteenth Year of King *Charles* the Second, entitled, *An Act for establishing Articles and Orders, for the regulating and better Government of his Majesty's Navy, Ships of War, and Forces by Sea*, and not otherwise. PROVIDED NEVERTHELESS that all Disorders and Misdemeanors committed on Shore by any Captain, Commander, Lieutenant, Master, Officer, Sea Man, Soldier, or any other Person whatsoever, belonging to any of our Ships of War, or other Vessels acting by immediate Commission, or Warrant from our High Admiral of *England*, under the Seal of our Admiralty, or from our Commissioners for executing the Office of High Admiral of *England*, for the Time being, may be tryed and punished according to the Laws and Place where any such Disorder, Offences and Misdemeanours, shall be committed on Shore, notwithstanding such Offender be in our actual Service and in our pay on board any such our Ships of War or other Vessels, acting by immediate Commission or Warrant from our High Admiral, or from our Commissioners for executing the Office of High Admiral for the Time being as aforesaid, so as he shall not receive any Protection for the delaying of Justice, for such Offences committed on Shore, from any pretence of his being employed in our Service at Sea. Our Will and Pleasure is, that all publick Money raised, or shall be raised by any Act hereafter to be made

within our said Province, and issued out by Warrant from you, by and with the Advice and Consent of our Council, and disposed of by you for the Support of the Government, and otherwise, we do hereby give you the said Lord *Cornbury*, full Power and Authority to order and appoint Fairs, Marts, and Markets, as also such and so many Ports, Harbours, Cayes, Havens, and other places for the Conve- niency and Security of Shipping, and for the loading and unloading of Goods and Merchandize, as by you, with the advice and consent of our said Council, shall be thought fit and necessary. And we do hereby require and command all Officers and Magistrates, Civil and Military, and all other the Inhabitants of our said Province, to be obedient, aiding and assisting unto you our said Lord *Cornbury*, in the execution of this our Commission, and for the Powers and Authorities herein contained ; and in case of your Death or Absence out of our said Province, to be obedient, aiding and assisting to such Person as shall be appointed by us, to be our Lieutenant Governor or Commander in Chief of the said Province, to whom we do therefore by these Presents, give and grant all and singular the Privileges and Authorities aforesaid, to be by him executed and enjoyed during our Pleasure, or until your arrival within our said Province : And if upon your Death or Absence out of our said Province there be no Person upon the Place commissioned or appointed by us to be our Lieutenant Governor, or Commander in Chief of the said Province, our Will and Pleasure is, that the then present Council of our said Province, do take upon them the Administration of the Government, and execute this Commission, and the several Powers and Authorities herein contained, and that such Councillor who shall be at the Time of your Death or Absence, residing within our said Province, and nomi-

nated by our Instructions to you, before any other at that Time residing there, do preside in our said Council, with such Privileges and Preeminences as may be necessary in those circumstances, for the due and orderly carrying on the publick Service in the Administration of the Government as aforesaid, until our Pleasure be further known, or until your return. LASTLY we do hereby declare, ordain and appoint, that you the said Lord Cornbury, shall and may hold, execute and enjoy the Office and Place of Captain General and Governor in Chief, in and over our Province of *Nova-Cæsarea*, or *New-Jersey*, together with all and singular the Powers and Authorities hereby granted unto you, for and during our Will and Pleasure from and after the Publication of this our Commission. IN WITNESS whereof we have caused these our Letters to be made Patent. WITNESS our self at *Westminster*, the fifth Day of *December*, in the first Year of our Reign.

Per bre probate, Sigillo. WRIGHT.

The foregoing is a true Copy taken from and compared with the Record in the Secretary's Office, at Burlington, in Lib. A. A. A. of Commissions, Folio 1st.

Examined per

Samuel Peart, D. Secretary.

APPENDIX C.

By His Excellency Edward Viscount Cornbury
Capt. General and Governour in Chief in and
over her Majesty's Provinces of New-Jersey,
New-York, and all the Territories and Tracts of
Land depending thereon in America, and Vice-
Admiral of the same, &c. **AN ORDINANCE FOR
ESTABLISHING COURTS OF JUDICATURE.**

Whereas Her Most Sacred Majesty, *ANNE*, by the
Grace of God, Queen of *England, Scotland, France, and
Ireland*, Defender of the Faith, &c. by her Royal Letters
Patents, bearing date the 5th day of *December*, in the
first year of her Majesty's Reign, did among other things
therein mentioned, give and grant unto his Excellency
Edward Viscount Cornbury, Captain General and Gover-
nour in Chief in and over the Province of *Nova-Cesarea*,
or *New-Jersey*, &c. full Power and Authority, with the
Advice and Consent of her Majesty's Council of the said
Province, to erect, constitute, and establish such and so
many courts of Judicature and publick Justice within the
said Province and Territories depending thereon, as his

said Excellency & Council shall think fit and necessary, for the Hearing and Determining all Causes as well Criminal as Civil, according to Law and Equity, and for awarding Execution thereupon, with all necessary Powers, Authorities, Fees and Priviledges belonging to them.

His Excellency the Governour, by and with the Advice and Consent of her Majesty's Council, and by virtue of the Powers and Authorities derived unto him by her said Majesty's Letters Patents, doth by these Presents *Ordain, and it is hereby Ordained by the Authority aforesaid,* That every Justice of the Peace that resides within any Town or County within this Province, is by these Presents fully impowered and authorized to have Cognizance of all Causes or Cases of Debt and Trespass to the value of *Forty Shillings*, or under; which Causes or Cases of Debt and Trespasses, to the value of Forty Shillings, or under, shall and may be Heard, Try'd and finally Determined without a Jury, by every Justice of the Peace residing, as aforesaid.

The Process of Warning against a *Free-Holder* or *Inhabitant* shall be by Summons, under the Hand of the Justice, directed to the Constable of the Town or Precinct, or to any deputed by him, where the party complained against does live or reside; which Summons being personally served or left at the Defendant's House or place of his Abode, four days before the hearing of the Plaint, shall be sufficient Authority to and for the said Justice to proceed to hear such Cause or Causes, and Determine the same in the Defendants absence, and to grant Execution thereupon against the Defendants Person, or for want thereof, his Goods and Chattels, which the Constable, or his Deputy, of that Town or Precinct shall and may serve,

unless some reasonable excuse for the Parties absence appear to the Justice.

And the Process against an *Itinerant Person, Inmate or Foreigner*, shall be by Warrant from any one Justice of the Peace, to be served by any Constable, or his Deputy within that County, who shall by virtue thereof, arrest the Party, and him safely keep till he be carried before the said Justice of the Peace, who shall and may immediately hear, try, & finally determine, all such Causes and Cases of Debt and Trespass, to the value of *Forty Shillings*, or under, by awarding Judgment and Execution; and if payment be not immediately made, the Constable is to deliver the Party to the Sheriff, who is hereby required to take him into Custody, and him safely keep till payment be made of the same, with Charges; *Always Provided*, That an Appeal to the Justices at the next Court of Sessions held for the said County, shall be allowed for any sum upwards of *Twenty Shillings*.

And his said Excellency, by the advice and consent aforesaid, doth by these Presents further Ordain, That there shall be kept and holden a Court of *Common Pleas* in each respective County within this Province, which shall be holden in each County at such place where the General Court of Sessions is usually held and kept, to begin immediately after the Sessions of the Peace does end and terminate, and then to hold and continue as long as there is any business, not exceeding three days.

And the several and respective Courts of Pleas hereby established, shall have Power & Jurisdiction to hear, try, and finally determine all Actions or Causes of Action, and all Matters and Things Tryable at Common Law, of what nature or kind soever. *Provided always, and it is hereby Ordained*, That there may, and shall be an Appeal or

Removal by *Habeas Corpus*, or any other lawful Writ, of any Person or of any Action or Suit depending, and of Judgment or Execution that shall be determined in the said respective Courts of Pleas, upwards of Ten Pounds, and of any Action or Suit wherein the Right or Title of, in or to any Land, or anything relating thereto, shall be brought into Dispute or upon Tryal.

And it is further Ordained by the Authority aforesaid, That the General Sessions of the Peace shall be held in each respective County within this Province at the Times and places hereafter mentioned, that is to say,

For the County of *Middlesex*, at *Amboy* the third *Tuesdays* in *February*, *May* and *August*; and the fourth *Tuesday* in *November*.

For the County of *Bergen*, at *Bergen*, the first *Tuesdays* in *February*, *May* and *August*, and the second *Tuesday* in *November*.

For the County of *Essex*, at *Newark*, the second *Tuesdays* in *February*, *May* and *August*; and the third *Tuesday* in *November*.

For the County of *Monmouth*, at *Shrewsbury*, the fourth *Tuesdays* in *February*, *May* and *August*, and the first *Tuesday* in *December*.

For the County of *Burlington*, at *Burlington*, the first *Tuesdays* in *March*, *June*, and *September*, and the second *Tuesday* in *December*.

For the County of *Gloucester*, the second *Tuesdays* in *March*, *June* and *September*, and the third *Tuesday* in *December*.

For the County of *Salem*, at *Salem*, the third *Tuesdays* in *March*, *June* and *September*, and the fourth *Tuesday* in *December*.

For the County of *Cape May*, at the house of *Shamger*

Hand, the fourth *Tuesdays* in *March*, *June* and *September*, and the first *Tuesday* in *January*. Which General Sessions of the Peace in each respective County aforesaid, shall hold and continue for any term not exceeding two days.

And be it further Ordained by the Authority aforesaid, That there shall be held and kept at the Cities or Towns of *Perth-Amboy* and *Burlington*, alternately, a *Supream Court* of Judicature, which *Supream Court* is hereby fully impowered to have Cognizance of all Pleas, civil, criminal, and mixt, as fully and amply, to all intents and purposes, whatsoever, as the Courts of *Queens Bench*, *Common Pleas* and *Exchequer* within her Majesties Kingdom of *England* have or ought to have, in and to which *Supream Court* all and every Person and Persons whatsoever shall and may, if they see meet, commence any Action or Suit, the Debt or Damage laid in such Action or Suit, being upwards of Ten Pounds, and shall or may by *Certiorari*, *Habeas Corpus*, or any other lawful Writ, remove out of any of the respective Courts of *Sessions of the Peace* or *Common Pleas*, any Information or Indictment there depending, or Judgment thereupon given, or to be given in any Criminal matter whatsoever, cognizable before them, or any of them, as also all actions, Pleas, or Suits, real, personal, or mixt, depending in any of the said Courts, and all Judgments thereupon given, or to be given, *Provided always*, That the Action or Suit depending, or Judgment given, be upwards of the value of Ten Pounds, or that the Action or Suit there depending or determined be concerning the Right or Title of any Free-hold.

And out of the office of which *Supream Court* at *Amboy* and *Burlington* all process shall issue out, under the Test of the chief Justice of the said Court; unto which

Office all Returns shall be made. Which *Supream Court* shall be holden at the Cities of *Amboy* and *Burlington* alternately, at *Amboy* on the first *Tuesday* in *May*, and at *Burlington* on the first *Tuesday* in *November*, annually, and every year; and each Session of the said Court shall continue for any Term not exceeding five days. And one of the Justices of the said *Supream Court* shall once in every Year, if need shall so require, go the Circuit, and hold and keep the said *Supream Court*, for the County of *Bergen*, at *Bergen*, on the third *Tuesday* in *April*. For the County of *Essex*, at *Newark*, on the fourth *Tuesday* in *April*. For the County of *Monmouth*, at *Shrewsbury*, the second *Tuesday* in *May*. For the County of *Gloucester*, at *Gloucester*, the third *Tuesday* in *May*. For the County of *Salem*, at *Salem*, the fourth *Tuesday* in *May*. For the County of *Cape May*, at *Shamger Hands*, the first *Tuesday* in *June*. Which Justice, when he goes the Circuit, shall in each respective County be assisted by two, or more Justices of the Peace, during the time of two days, whilst the Court, in the Circuit, is sitting, and no longer.

And it is further Ordained by the Authority aforesaid, That all and every of the Justices or Judges of the several Courts afore-mentioned, be, and are hereby sufficiently Impowered and Authorized to make, ordain and establish all such Rules and Orders, for the more regular practising and proceeding in the said Courts, as fully and amply, to all intents and purposes whatsoever, as all or any of the Judges of the several Courts of *Queens-Bench*, *Common-Pleas*, and *Exchequer*, in *England* legally do.

And it is further Ordained by the Authority aforesaid, That no Persons Right of Property shall be, by any of the aforesaid Courts, Determined, except where matters of Fact are either acknowledged by the Parties, or Judgment

confessed, or passeth by the Defendants fault for want of Plea or Answer, unless the Fact be found by Verdict of Twelve Men of that Neighbourhood, as it ought to be done by Law.

CORNBURY.

APPENDIX D.

An Ordinance for Establishing Courts of Judicature within the Province of New-Jersey.

By his Excellency Robert Hunter, Esq., Captain-General and Governour in Chief in and over the Provinces of New-Jersey, New-York, and all the Territories and Tracts of Land depending thereon in America, and Vice Admiral of the same, &c. in Council.

His Excellency the Governour, by virtue of the Power and Authority to him given by her Majesties Letters Patents under the great Seal of *Great Britain*, by and with the Advice and Assistance of her Majesties Council for the said Province of *Nova-Cesarea*, doth hereby Ordain and Impower every Justice of the Peace residing within any Town or County within this Province of *Nova-Cesarea* to have Cognizance of all Causes and Cases of Debt or Trespass, to the value of *Forty Shillings* or under, all which Causes and Cases shall and may be heard, tryed and finally Determined, without a Jury, by any of the said

Justices of the Peace, as aforesaid, excepting such Cases where Titles of Land are or may be any way concerned.

And be it ordained by the Authority aforesaid, That the Process of Warning against a Free-holder or Inhabitant, shall be by Summons under the Hand of any of the said Justices of the Peace, directed to the Constable of the Town or Precinct, or to any deputed by him, where the party complained against does dwell or reside, which Summons shall be served upon the Person, or left at the House or place of abode of the Defendant, four days at least before the Time appointed for the hearing of the Plaint. And in case the Defendant does not appear at the Time appointed, the Justice granting such Summons may proceed to hear such Cause or Causes, and Determine the same in the Defendants absence (unless the said Justice, for good reason see cause to the contrary) and grant Execution thereupon, directed to the said Constable, or his Deputy, to be levied upon the Defendants Goods and Chattels, or for want thereof upon the Person of the Defendant, which he is hereby directed, and required to execute accordingly.

And be it ordained by the Authority aforesaid, That the Process against an Itinerant Person, Inmate or Foreigner, shall be by Warrant from any one Justice of the Peace, to be served by any Constable or his Deputy, within that County, who shall, by virtue thereof, arrest the Party and him safely keep till he be carryed before the said Justice, who shall and may immediately Hear, Try and finally Determine all such Causes and Cases of Debt and Trespass, as aforesaid, to the value of *Forty Shillings*, or under, by awarding Judgment and Execution. And if payment be not immediately made, the Constable shall deliver the said Party to the Sheriff of that County, who is

hereby required to take him into Custody, and him safely keep till Payment be made of the same, with Charges.

Provided always, and it is hereby further Ordained, That an Appeal to the Justices of the same County at the next General Court of Sessions of the Peace held, shall be allowed for any Sum upwards of *Twenty Shilings* in all Causes and Cases whatsoever.

And it is hereby further Ordained by the Authority aforesaid, That there shall be kept and holden a *Court of Common Pleas* in each respective County within this Province of *New-Jersey* aforesaid, at such places where the General Courts of *Sessions of the Peace* are usually held and kept, to begin immediately after, or the next Day after the *General Sessions of the Peace* ends and terminates, and then to hold and continue for any time, not exceeding Three Days. Which several and respective Courts of *Common Pleas* shall have power and Jurisdiction to Hear, Try, and finally Determine all Actions or Causes of Action, and all Matters and Things Tryable at Common Law, of what nature and kind soever.

And it is hereby further Ordained by the Authority aforesaid, That the General Courts of Sessions of the Peace shall be held and kept in each respective County within this Province, at the Times and Places herein after-mentioned, That is to say,

The first Court of Sessions to be held after the Publication hereof, at the Times and Places to which the said Courts were last adjourned, and thereafter yearly and every year.

For the County of *Bergen*, at the Town of *Bergen*, until the Court-House and Gaol, for said County be built, on the first Tuesdays in *February* and *August*, and the third Tuesdays in *April* and *October*, and thereafter at the

Court-house of the said County on the Days and Times before-mentioned.

For the County of *Essex*, at *Newark*, the second Tuesday of *February* and *August*; and the fourth Tuesday in *April* and *October*.

For the County of *Middlesex* and *Somerset*, at the Town of *Perth-Amboy*, the third Tuesday of *February*, *May*, *August* and *November*.

For the County of *Monmouth*, at *Shrewsbury*, until the Court-house and Gaol for said County be built, and thereafter at the Court-house in the said County, on the fourth Tuesday of *February*, *May*, *August* and *November*.

For the County of *Hunterdon*, at *Maidenhead*, the first Tuesday in *June* and *December*. And at *Hopewell*, the first Tuesday in *March* and *September*, until the Court-house and Gaol for said County be built, and thereafter at the Court-house of said County only.

For the County of *Burlington*, at the Town of *Burlington*, on the second Tuesday of *March*, *June*, *September* and *December*.

For the County of *Gloucester*, at the Town of *Gloucester*, on the third Tuesday in *March*, *June*, *September*, and *December*.

For the County of *Salem*, at the Town of *Salem*, on the fourth Tuesday in *March*, *June*, *September* and *December*.

For the County of *Cape-May*, at *Cape-May*, the first Tuesday in *April*, *July*, *October* and *January*.

Which General Court of Sessions of the Peace shall hold and continue for any time not exceeding two Days.

And it is hereby further ordained by the Authority aforesaid, That there shall be a *Supream Court* of Judicature held and kept at *Burlington* on the first Tuesday of *May* next, to which Time and Place it was left adjourned,

and on the first Tuesday in *November*. And yearly and every year at *Burlington* on the first Tuesdays of *May* and *November*. And yearly and every year at *Perth-Amboy* on the second Tuesday of *May*, and second Tuesday of *November*.

Which Supream Court shall continue for any Term not exceeding five days, and is hereby fully Impowered to have Cognizance of all pleas Civil, Criminal and Mixt, as fully and amply to all intents and purposes whatsoever, as the Courts of *Queens Bench*, *Common Pleas*, and *Exchequer* in *England*, have or ought to have. In and to which Court all and every Person and Persons whatsoever, shall and may commence and prosecute any Action or Suit, the real Debt or Damages thereof being *Twenty Pounds*, or upwards, and shall or may by *Certiorari*, *Habeas Corpus*, *Writ of Error*, or any other lawful Writ, remove out of any of the said respective Courts of Sessions of the Peace, any Information, Presentment or Indictment there depending, or Judgment thereupon given, or to be given in any Criminal Matter whatsoever, cognizable before them, or any of them, as also all Actions, Pleas or Suits, Real, Personal, or Mixt, depending in any of the said Courts of Common Pleas, and all Judgments thereupon given, or to be given. *Provided always*, That the Action or Suit depending, or Judgment given be of the Value of *Twenty Pounds*, or upwards, or that the same be of, for or concerning the Right or Title of any Lands, Tenements and Hereditaments whatsoever.

And it is hereby further Ordained and Declared by the Authority aforesaid, That the Office of the said *Supream Court* of Judicature shall be kept by the Clerk thereof, or his sufficient Deputy, at *Perth-Amboy* aforesaid, for the *Eastern*, and at *Burlington* aforesaid for the *Western*

Division, under the Penalty of Deprivation, and such other Fines as the Law can inflict. Out of which Office of *Perth-Amboy* and *Burlington* aforesaid, all Process shall issue for each Division respectively, under the Test of the Chief Justice of said Province, for the time being; and unto which Office all Returns shall be made respectively.

And it is hereby further Ordained and Declared by the Authority aforesaid, That all and every the Justices and Judges of the said several Courts are sufficiently Impowered and Authorized to make, order and establish such Rules and Orders for the more Regular Proceedings in the said Courts, as Justices and Judges in *England* may lawfully do, any former Ordinance or Establishment of Courts of Judicature to the contrary hereof in any way notwithstanding; All which are from hence-forward declared to be Null and Void by these Presents.

Given under my Hand and Seal in Horsumus the 17th Day of April, in the Thirteenth year of her Majesties Reign, Annoq; Domini 1714.

RO. HUNTER.

APPENDIX E.

An Ordinance for Regulating the Courts of Judicature in the Province of *New-Jersey*.

GEORGE, by the Grace of God, of *Great Britain, France and Ireland*, KING, Defender of the Faith, &c. Whereas We have thought fit, by Advice of the most Honourable, the Lords of Our Privy Council, at Our Court at *St. James's*, on the Twentieth Day of *January*, in the Eighth Year of Our Reign, to Disallow some Laws or Acts of General Assembly of the Province of *New-Jersey*, made and Enacted by the Governour, Council and Representatives of that Province, in General Assembly, met, viz. One Act, Entituled, *An Act for shortening of Law Suits and Regulating the Practice of the Law*; One other Act, Entituled, *An Act for Acknowledging and Recording of Deeds and Conveyances of Land within each respective County of this Province*; and one other Act, Entituled, *An Act for Enforcing the Observation of an Ordinance for Establishing Fees within this Province*. And Whereas a late Ordinance for Establishing Courts of Judicature within the same Province, was in some measure made conforma-

ble to one of the said Laws, so as aforesaid Disallowed. And whereas another Ordinance was made, bearing Date the Twenty-ninth Day of *April*, 1723, upon the Repeal of the said Acts, for Regulating of Courts of Judicature, which is found inconvenient to the Inhabitants of this Province, both as to the Times of the Sitting of the Courts, and for want of Persons authorized to take Bail in the Counties, and of Courts for Tryals of Causes in the Counties, that came to issue in the Supreme Court. *We have therefore thought fit to Ordain, & We do hereby Ordain, Direct and Impower* Every Justice of the Peace residing within any Town or County in the Province of *Nova-Cæsarea*, or *New-Jersey*, to have Cognizance in all Causes and Cases of Debt and Trespass, of the Value of *Forty Shillings*, or under ; All which Causes and Cases shall and may be Heard, Tryed and finally Determined, without a Jury, by any of the said Justices of the Peace, as aforesaid, Excepting such Cases where the Titles of Land are or may be any wise concerned.

AND We do hereby further Ordain and Direct, That the Process of Warning against Free-holders and Inhabitants shall be by Summons under the Hand of any of the said Justices of the Peace, directed to the Constable of the Town or Precinct, or to any deputed by him, where the Party Complained against doth dwell or reside. Which Summons shall be served upon the Person or left at the House or Place of Abode of the Defendant, Four Days, at least, before the Time appointed for the Hearing of the Plaint. And in case the Defendant does not appear at the time appointed, on Affidavit made by the said Constable or his Deputy, That the said Summons was duly served on the Defendant's Person or left at the Defendant's House or

Place of Abode, with some of the Family of the said Defendant, the Justice granting such Summons may, and shall not otherwise, proceed to Hear such Cause or Causes, and Determine the same in the Defendant's Absence, and grant Execution thereupon, directed to any of the Constables or Deputy Constables, to be levied upon the Defendant's Goods and Chattles, and for want thereof upon the Person of the Defendant, which he is hereby Impowered and Directed to execute accordingly.

And We do hereby further Ordain and Direct, That the Process against an Itinerant Person, Inmate or Forreigner shall be by Warrant from any one Justice of the Peace, to be served by any Constable or his Deputy within that County, who shall, by virtue thereof, Arrest the Party, and him safely keep till he shall be carried before the said Justice, who shall and may immediately Hear, Try and finally Determine all such Causes and Cases of Debt and Trespas, as aforesaid, to the Value of *Forty Shillings*, or under, by Awarding Judgment and Execution. And if Payment be not immediately made, the Constable shall deliver the said Party to the Sheriff of that County, who is hereby Required and Impowered to take him into Custody, and him safely keep until Payment be made of the same, with Charges.

Provided always, and We do hereby further Ordain and Direct, That an Appeal shall be allowed to the Justices of the same County at the next General Court of Sessions, of the Peace held, for any Sum upwards of *Ten Shillings*, in all Causes or Cases Cognizable before them.

And Whereas We are given to understand that many of the Inhabitants of Our said Province live Remote from

the Places in which We have appointed Our Supreme Court to be held, and that it will be of great Ease and Convenience to the said Inhabitants that a Court be held in each County, for the Hearing, Trying and Determining of such Actions and Causes of Actions as shall arise within each of the said Counties, and Determinable by Juries of the same, We being willing and desirous to promote the Ease, Well-being and Security of all our Loving Subjects, Inhabitants of the said Province of *New-Jersey*, and that Right and Justice may be distributed among them, and that all matters of Difference may be Determined by their Equals and Neighbours, as nigh as the present Circumstances of Our said Province will admit, according to the good and ancient Laws and Usages of Our Kingdom of *Great Britain*, Do Ordain and Direct, That the County Courts for holding of Pleas, continue to be held and kept in each of the several and respective Counties of Our Province of *New-Jersey*, to Hear, and by the Verdict of Twelve Good Honest and Lawful Free-holders inhabiting within the said respective County where the said Court is held, to Try and Determine all Suits, Controversies, Quarrels and Differences that may arise within the said County between Our Loving Subjects, for any Sum above the Value of *Forty Shillings* (Causes wherein the Right or Title of any Lands, Tenements or Hereditaments in any wise concerned, Excepted,) Which said Suits, Controversies, Quarrels and Differences shall be Tryed and Determined in the said Courts by a Jury of Twelve Good and Lawful Free-holders, as aforesaid, and not otherwise.

And Whereas it may so happen, that by the Craft and Artful Practice of the Persons concerned in the said Causes, Quarrel and Controversies Tryable in the said

County Courts for holding of Pleas, the said Causes, Quarrels and Controversies may be drawn, contrary to Our Royal Intentions, from the Examination of the Jury, to the great delay and Hindrance of Justice; and it may also happen, that upon Special Verdicts given in Our said County Courts for holding of Pleas, and upon the Pleadings, before and after Verdict, Matters of Law may arise; *We have therefore thought fit to Ordain and Direct*, That on any Special Verdict found by a Jury in any of the said Courts, or any Joinder in Demurrer, or Pleading before or after Verdict, whereby any Points of Law may be in issue, (such Points of Law as are necessary to be Determined by the Judges of the said Courts, for the Regulation and Information of the Jury, only Excepted,) That then and in such Case, the Clerk of any of the said County Courts, respectively, where the same shall happen, shall make up a Record of all the Pleadings or Special Verdicts, as the case may happen, and Transmit the same to the Chief Justice of the Supreme Court, at the next Supreme Court that shall sit after such Joinder in Demurrer, Pleading made or Special Verdict given, that Judgment may be given thereon, by the Justices of Our Supreme Court,

And We do hereby Ordain and Direct, That the Courts of General Sessions of the Peace, and County Courts for holding of Pleas, shall be held and kept in each respective County within this Province, at the Times and Places hereafter mentioned, that is to say, The first and next Court of Sessions and Pleas, at the Times and Places to which the same Courts were respectively last Adjourned, and afterwards, in every year, to be Opened on the following Days, viz.

For the County of *Bergen*, at the Court-house of the

said County on the second *Monday* of *September*, first *Monday* of *December*, third *Monday* of *February*, and second *Monday* of *May*.

For the County of *Essex*, at *Newark*, on the *Thursday* next ensuing after the second *Monday* of *September*; the *Thursday* next ensuing after the first *Monday* of *December*; the *Thursday* next ensuing after the third *Monday* of *February*; the *Thursday* next ensuing after the second *Monday* of *May*.

For the County of *Middlesex*, at the City of *Perth-Amboy*, on the third *Monday* of *September*, Second *Monday* of *December*, Fourth *Monday* of *February*, and Fourth *Monday* of *May*.

For the County of *Somerset*, at the Court-house of the same County, on the *Thursday* next ensuing after the Third-*Monday* of *September*; The *Thursday* next ensuing after the second *Monday* of *December*; The *Thursday* next ensuing after the Fourth *Monday* of *February*; and the *Thursday* next ensuing after the Fourth *Monday* of *May*.

For the County of *Monmouth*, at the Court-house of the same County, on the first *Tuesday* of *October*, Third *Tuesday* of *December*, First *Tuesday* of *March*, and Second *Tuesday* of *June*.

For the County of *Hunterdon*, at the Court-house of the same County, the Third *Monday* of *October*, Fourth *Monday* of *December*, Second *Monday* of *March*, and Fourth *Monday* of *July*.

For the County of *Burlington*, at the Town-house of *Burlington*, on the *Thursday* next ensuing after the Fourth *Monday* of *July*; The *Thursday* next ensuing after the Third *Monday* of *October*; The *Thursday* next ensuing af-

ter the Fourth *Monday of December*; and the *Thursday* next ensuing after the Second *Monday of March*.

For the County of *Gloucester*, at *Gloucester*, on the Second *Monday of August*, Fourth *Monday of October*, First *Monday of January*, and Third *Monday of March*.

For the County of *Salem*, at *Salem*, on the *Thursday* next ensuing after the Second *Monday of August*; The *Thursday* next ensuing after the Fourth *Monday of October*; The *Thursday* next ensuing after the First *Monday of January*; and the *Thursday* next ensuing after the Third *Monday of March*.

For the County of *Cape-May*, at *Cape-May*, the Second *Tuesday of July*, the First *Tuesday of November*, the Second *Tuesday of January*, and the First *Tuesday of April*. And shall sit any time, not exceeding Three Days:

And Whereas the Times of the Sitting of Our Supreme Court of Our said Province of *New-Jersey*, are, by Experience, found to be inconvenient, and to occasion Delay in the Administration of Justice, to the great Hurt of several of Our Loving Subjects who have Causes depending in Our said Supreme Court. For Remedy whereof, for the Future, We have thought fit to Ordain, and do hereby Ordain and Direct, That Our Supreme Court of Our said Province of *New-Jersey*, shall sit and be held at the Places following, and shall sit at and during the Times herein after mentioned, That is to say, The next Supreme Court at *Burlington* and *Amboy*, at the Times unto which the said Courts were last, respectively, Adjourned, and afterwards on the First *Tuesday of August* at *Burlington*, the Fourth *Tuesday of September* at *Perth-Amboy*. The last *Tuesday of March* at *Burlington*, and the Third *Tuesday of May* at *Perth-Amboy*, yearly. Which Supreme Court shall Continue for any Term not Exceeding Five Days, and is here-

by fully impowered to have Cognizance of all Pleas, Civil, Criminal and Mixt, within this Province, as fully and amply, to all Intents, Constructions and Purposes whatsoever, as the Courts of Kings-Bench, Common-Pleas and Exchequer have, or ought to have in Our Kingdom of *Great Britain*. In which Court all and every Person or Persons whatsoever may Commence and Prosecute any Action or Suit, Real, Personal or Mixt, above the Value of *Five Pounds*. And any Action, Suit or Controversie, Information, Indictment, or Prosecution Depending, or on which Judgment has been given in any of Our Inferiour Courts, may, by *Certiorari*, *Habeas Corpus*, *Writ of Error*, or any other Lawful Writ or Method, be Removed into Our said Supreme Court, from any of the Inferiour Courts within Our said Province.

And we do hereby further Ordain and Direct, That the Office of Clerk of the said Supreme Court of Judicature shall be kept by himself or his sufficient Deputy, at *Perth-Amboy* in the Eastern-Division, and *Burlington* in the Western-Division. And that all Writs and Process of the Supreme Court for Our Province of *New-Jersey*, shall issue out of the Office in either of the said Places indifferently, and that the Courts at *Perth-Amboy* and *Burlington*, shall take Cognizance of such Writs and Process accordingly. *Nevertheless so*, that all Actions and Causes of Actions arising in either the Eastern or Western Division of this Province, are to be Tryed in, and a Verdict given by Jurors of that Division only in which the Cause of Action shall arise, as near and agreeable to the Laws, Customs and Usages in Our Kingdom of *Great Britain*, as may be.

And for the greater Ease and Benefit of all our Loving

Subjects inhabiting withing Our Province of *New-Jersey*, and of all Persons whatsoever in taking Recognizance of Special Bail upon all Actions and Suits depending, or to be depending in Our said Supreme Court in Our said Province of *New-Jersey*. We do hereby Impower any two of Our Judges of Our Supreme Court, of which Our Chief Justice to be always one, to grant one or more Commission or Commissions under the Seal of the said Supreme Court, from time to time, as need shall require, to empower such and so many Persons, as by Our said Chief Justice and other Judge of Our Supreme Court aforesaid, shall be thought fit and necessary, in all and every of the several Counties in our said Province of *New-Jersey*, to take and receive all and every such Recognizance or Recognizances of Bail or Bails, as any Person or Persons shall be willing and desirous to acknowledge or make before any of the Persons so empowered, in any Action or Suit depending, or hereafter to be depending in Our said Supreme Court of Our Province of *New-Jersey*, in such manner and Form, and by such Recognizance or Bail-Piece as the Judges of Our Supreme Court have here-to-fore used to take the same; Which said Recognizance or Recognizances of Bail or Bail-Piece shall be Transmitted to some one of the Judges of Our Supreme Court, and by him received, upon payment of the usual Fees, and Affidavits made, according to the Directions in one Act of the Parliament in *England*, made in the fourth and fifth years of the Reign of Our Royal Predecessors *William and Mary*, King and Queen of *England, Scotland, France and Ireland, &c.*, Entituled, *An Act for taking Special Bails in the Country, upon Actions and Suits depending in the Courts of Kings-Bench, Common-Pleas and Exchequer at Westminster.* Which Act of Parliament We hereby Recommend to Our Judges

of Our Supreme Court of Our said Province of *New-Jersey*, and to the Persons by them impowered to take and receive Recognizances of Special Bail, as a Direction to Govern themselves by, as nearly as the Circumstances of Our said Province of *New-Jersey* will admit the same to be done.

And Whereas the bringing of Jurors and Evidences from the several Counties within Our Province of *New-Jersey*, will be at the great Charge and Expense of such of Our Loving Subjects as have Causes Depending, or that will be Depending in Our Supreme Court of Our said Province of *New-Jersey*, We do, for the ease and benefit of Our said Loving Subjects, *further Ordain*, That Our Chief Justice or other Justice of Our Supreme Court, shall annually and every Year (if there be occasion) go into every County in our said Province, except the Counties of *Bergen* and *Cape-May*, and there hold a Court for the Tryal of such Causes arising in the several and Respective Counties, as are brought to Issue in our said Supreme Court; which Causes our Chief Justice or other Justice of our said Supreme Court, is hereby Impowered to hear and try, by Jurors of the said Counties, and on any Verdict in any of the said Counties, within our said Province, Judgment to Give, at our next Supreme Court of Judicature, to be holden at our City of *Perth-Amboy*, or Town of *Burlington*, after such Verdict given in any of the said Counties, within our said Province of *New-Jersey*; which Court for Tryal of Causes shall be held in our several Counties, excepting *Bergen* and *Cape-May*, for and during a Term not exceeding *Five Days*, and at the Times and Places following, that is to say,

For the Counties of *Essex* and *Bergen*, on the first *Thursday* after the second *Monday* of *May*, at *Newark*.

For the County of *Somerset*, the *Thursday* next ensuing after the fourth *Monday* of *May*, at the Court-house of the same County.

For the County of *Monmouth*, the first *Tuesday* of *October*, at *Freehold*.

For the County of *Hunterdon*, the fourth *Monday* of *July*, at *Trent-Town*.

For the County of *Gloucester*, the *Thursday* next ensuing after the third *Monday* of *July*, at *Gloucester*.

For the Counties of *Salem* and *Cape-May*, the third *Monday* of *July*.

Hereby Requiring and Commanding Our High-Sheriff, Justices of the Peace, the Mayor and Aldermen of any Corporation within any of Our said Counties, and all Officers, Magisterial and Ministerial of any Courts within Our said Counties, to be Attending on our Chief Justice, or other Justices going the Circuit, at his Coming into and Leaving their several Counties, and during his Abode within the same, on Penalty to be proceeded against according to Law, for their or any of their Neglect and Contempt of Our Royal Authority and Command hereby signified.

And it is further Ordained, That the Commissioners to be appointed for Taking of Special Bails in the respective Counties of this Province, for every Bail-piece taken by them, shall take the Sum of *Three Shillings*, and no more. And the Commissioners for Taking of Affidavits, for every Sheet in an Affidavit, *One Shilling*, and no more.

In Testimony whereof We have caused these Our Letters to be made Patent, and the Seal of Our Province of *New-Jersey* to be thereunto Affixed. *Witness* Our

Trusty & Well-beloved *William Burnet, Esq., Capt. General and Governour in Chief of the Provinces of New-Jersey, New-York, and Territories thereon depending in America, and Vice-Admiral of the same, &c., in Council at Perth-Amboy, the 23rd Day of April, in the Tenth year of Our Reign, Annoq. Domini, 1724.*

APPENDIX F.

An Ordinance for Regulating the Courts of Judicature in the Province of *New-Jersey*.

GEORGE, by the Grace of God, of *Great Britain, France and Ireland*, KING, Defender of the Faith, &c. Whereas We have thought fit, by Advice of the most Honourable, the Lords of Our Privy Council, at Our Court at *St. James's*, on the Twentieth Day of *January*, in the Eighth Year of Our Reign, to Disallow some Laws or Acts of General Assembly of the Province of *New-Jersey*, made and Enacted by the Governour, Council and Representatives of that Province in General Assembly met, viz., One entituled, *An Act for shortening of Law Suits and Regulating the Practice of the Law* ; One other Act, entituled, *An Act for Acknowledging and Recording of Deeds and Conveyances of Land within each respective County of this Province* ; and one other Act, entituled, *An Act for Enforcing the Observation of an Ordinance for Establishing Fees within this Province*. And Whereas a late Ordinance for Establishing Courts of Judicature within the same Province, was in some measure made conformable to one of the said Laws, so as aforesaid Disallowed. And

whereas another Ordinance was made, bearing Date the *Twenty-ninth Day of April, 1723*, upon the Repeal of the said Acts, for Regulating of Courts of Judicature, which is found inconvenient to the Inhabitants of this Province, both as to the Times of the Sitting of the Courts, and for want of Persons authorized to take Bail in the Counties, and of Courts for Tryals of Causes in the Counties, that came to issue in the Supreme Court, *We have therefore thought fit to Ordain, and We do hereby Ordain, Direct and Impower* Every Justice of the Peace residing within any Town or County in the Province of *Nova-Cæsarea* or *New-Jersey*, to have Cognizance of all Causes and Cases of Debt and Trespass, of the Value of *Forty Shillings*, or under; All which Causes and Cases shall and may be Heard, Tryed and finally Determined, without a Jury, by any of the said Justices of the Peace, as aforesaid, Excepting such Cases where the Titles of Land are or may be any wise concerned.

AND We do hereby further Ordain and Direct, That the Process of Warning against Free-holders and Inhabitants shall be by Summons under the Hand of any of the said Justices of the Peace, directed to the Constable of the Town or Precinct, or to any deputed by him, where the Party Complained against doth dwell or reside. Which Summons shall be served upon the Person or left at the House or Place of Abode of the Defendant, Four Days, at least, before the Time appointed for the Hearing of the Plaint. And in case the Defendant does not appear at the time appointed, on Affidavit made by the said Constable or his Deputy, That the said Summons was duly served on the Defendant's Person or left at the Defendant's House or Place of Abode, with some of the Family of the said Defendant, the Justice granting such Summons may, and

shall not otherwise, proceed to Hear such Cause or Causes, and Determine the same in the Defendant's Absence, and grant Execution thereupon, directed to any of the Constables, or Deputy Constables, to be levied upon the Defendant's Goods and Chattles, and for want thereof upon the Person of the Defendant, which he is hereby Impowered and Directed to execute accordingly.

And We do hereby further Ordain and Direct, That the Process against an Itinerant Person, Inmate or For-reigner shall be by Warrant from any one Justice of the Peace, to be served by any Constable or his Deputy within that County, who shall, by virtue thereof, Arrest the Party, and him safely keep till he shall be carried before the said Justice, who shall and may immediately Hear, Try and finally Determine all such Causes and Cases of Debt and Trespass, as aforesaid, to the Value of *Forty Shillings*, or under, by Awarding Judgment and Execution. And if Payment be not immediately made, the Constable shall deliver the said Party to the Sheriff of that County, who is hereby Required and Impowered to take him into Custody, and him safely keep until Payment be made of the same, with Charges.

Provided always, and We do hereby further Ordain and Direct, That an Appeal shall be allowed to the Justices of the same County at the next General Court of Sessions of the Peace held, for any Sum upwards of *Ten Shillings*, in all Causes or Cases Cognizable before them.

And Whereas We are given to understand, that many of the Inhabitants of Our said Province live Remote from the Places in which We have appointed Our Supream Court to be held, and that it will be of great Ease and Conveniency to the said Inhabitants that a Court be held in each County, for Hearing, Trying and Determining of

such Actions and Causes of Actions as shall arise within each of the said Counties, and Determinable by Juries of the same, We being willing and desirous to promote the Ease, Wellbeing and Security of all Our Loving Subjects, Inhabitants of the said Province of *New-Jersey*, and that Right and Justice may be distributed among them, and that all matters of Differences may be Determined by their Equals and Neighbors, as nigh as the present Circumstances of Our said Province will admit, according to the good and antient Laws and Usages of Our Kingdom of *Great Britain: Do Ordain and Direct*, That the County Courts for holding of Pleas, continue to be held and kept in each of the several and respective Counties of Our Province of *New-Jersey*, to Hear, and by the Verdict of Twelve Good Honest and Lawful Free-holders inhabiting within the said respective County where the said Court is held, to Try and Determine all Suits, Controversies, Quarrels and Differences that may arise within the said County between Our Loving Subjects, for any Sum above the Value of *Forty Skillings*, (Causes wherein the Right or Title of any Lands, Tenements or Hereditaments in any wise concerned, Excepted,) Which said Suits, Controversies, Quarrels and Differences shall be Tryed and Determined in the said Courts by a Jury of Twelve Good and Lawful Free-holders as aforesaid, and not otherwise.

And Whereas it may so happen, that by the Craft and Artful Practice of the Persons Concerned in the said Causes, Quarrels and Controversies Tryable in the said County Courts for holding of Pleas, the said Causes, Quarrels and Controversies may be drawn, contrary to Our Royal Intention, from the Examination of the Jury, to the great Delay and Hindrance of Justice; and it may also happen, that upon special Verdicts given in Our said Coun-

ty Courts for holding of Pleas, and upon the Pleadings before and after Verdicts, Matters of Law may arise, *We have therefore thought fit to Ordain and Direct*, That on any Special Verdict found by a Jury in any of the said Courts, or any Joynder in Demurrer, or Pleading before or after Verdict, whereby any Points of Law may be in issue, (such Points of Law as are necessary to be Determined by the Judges of the said Courts, and for the Regulation and Information of the Jury, only Excepted,) That then and in such Case, the Clerk of any of the said County Courts, respectively, where the same shall happen, shall make up a Record of all the Pleadings or Special Verdicts, as the case may happen, and Transmit the same to the Chief Justice of the Supreme Court, at the next Supreme Court that shall sit after such Joinder in Demurrer, Pleading made or Special Verdict given, that Judgment may be given thereon, by the Justices of Our Supreme Court.

And We do hereby Ordain and Direct, that the Courts of General Sessions of the Peace, and County Courts for holding of Pleas, shall be held and kept in each respective County within this Province, at the Times and Places hereafter mentioned, that is to say, The first and next Court of Sessions and Pleas, at the Times and Places to which the same Courts were respectively Adjourned, and afterwards, in every year, to be Opened on the following Days, *viz.*

For the County of *Bergen*, at the Court-house of the said County on the second *Monday* of *September*, first *Monday* of *December*, third *Monday* of *February*, and second *Monday* of *May*.

For the County of *Essex*, at *Newark*, on the *Thursday* next ensuing after the second *Monday* of *September*; the *Thursday* next ensuing after the first *Monday* of *December*; the *Thursday* next ensuing after the third *Monday* of

February; the *Thursday* next ensuing after the second *Monday* of *May*.

For the County of *Middlesex*, at the City of *Perth-Amboy*, on the third *Monday* of *September*, second *Monday* of *December*, fourth *Monday* of *February*, and fourth *Monday* of *May*.

For the County of *Somerset*, at the Court-house of the same County, on the *Thursday* next ensuing after the third *Monday* of *September*; the *Thursday* next ensuing after the second *Monday* of *December*; the *Thursday* next ensuing after the fourth *Monday* of *February*; and the *Thursday* next ensuing after the fourth *Monday* of *May*.

For the County of *Monmouth*, at the Court-house of the same County, on the first *Monday* of *October*, third *Monday* of *December*, first *Monday* of *March*, and second *Monday* of *June*.

For the County of *Hunterdon*, at the Court-house of the same County, the third *Monday* of *October*, fourth *Monday* of *December*, second *Monday* of *March*, fourth *Monday* of *July*.

For the County of *Burlington*, at the Town-house of *Burlington*, on the *Thursday* next ensuing after the fourth *Monday* of *July*; the *Thursday* next ensuing after the third *Monday* of *October*; the *Thursday* next ensuing after the fourth *Monday* of *December*; and the *Thursday* next ensuing after the second *Monday* of *March*.

For the County of *Gloucester*, at *Gloucester*, on the second *Monday* of *August*, fourth *Monday* of *October*, first *Monday* of *January*, and third *Monday* of *March*.

For the County of *Salem*, on the *Thursday* next ensuing after the second *Monday* of *August*; the *Thursday* next ensuing after the fourth *Monday* of *October*; the *Thursday*

next ensuing after the first *Monday of January*; and the *Thursday* next ensuing after the third *Monday of March*.

For the County of *Cape-May*, at *Cape-May*, the second *Monday of July*, the first *Monday of November*, the second *Monday of January*, and the first *Monday of April*. And shall sit any time, not exceeding Three Days.

And Whereas the Times of the Sitting of Our Supreme Court of Our said Province of *New-Jersey*, are, by Experience, found to be inconvenient, and to occasion Delay in the Administration of Justice; to the great Hurt of several of our Loving Subjects who have Causes depending in Our said Supreme Court. For Remedy whereof, for the Future, *We have thought fit to Ordain, and do hereby Ordain and Direct*, That Our Supreme Court of Our said Province of *New-Jersey* shall sit and be held at the Places following, and shall sit at and during the Times herein after mentioned, That is to say, The next Supreme Court at *Burlington* and *Amboy*, at the Times unto which the said Courts were last respectfully, Adjourned, and afterwards on the last *Monday of March* at *Burlington*, the third *Monday of May* at *Perth-Amboy*. The first *Monday of August* at *Burlington*, and the fourth *Monday of September* at *Perth-Amboy*, yearly. Which Supreme Court shall continue for any Term not Exceeding Six Days, and is hereby impowered to have Cognizance of all Pleas, Civil, Criminal and Mixt, within this Province, as fully and amply, to all Intents, Constructions and Purposes whatsoever, as the Courts of Kings Bench, Common Pleas and Exchequer have, or ought to have in our Kingdom of *Great Britain*. In which Court all and every Person and Persons whatsoever may Commence and Prosecute any Action or Suit, Real, Personal or Mixt, above the Value of *Five Pounds*. And any Action, Suit or Controversie, Informa-

tion, Indictment, or Prosecution Depending, or on which Judgment has been given in any of Our Inferiour Courts, may, by *Certiorari*, *Habeas Corpus*, *Writs of Error*, or any other Lawful Writ or Method, be Removed into Our said Supreme Court, from any of the Inferiour Courts within Our said Province.

And We do hereby further Ordain and Direct, That the Office of the Clerk of the said Supreme Court of Judicature shall be kept by himself or his sufficient Deputy, at *Perth-Amboy* in the Eastern Division, and *Burlington* in the Western Division. And that all Writs and Process of the Supreme Court for Our Province of *New-Jersey*, shall issue out of either of the said Places indifferently, and that the Courts of *Perth-Amboy* and *Burlington*, shall take Cognizance of such Writs and Process accordingly. *Nevertheless so*, that all Actions and Causes of Actions arising in either the Eastern or Western Division of this Province, are to be Tryed in, and a Verdict given by Jurors of that Division only in which the Cause of Action shall arise, as near and agreeable to the Laws, Customs and Usages of Our said Kingdom of *Great Britain*, as may be.

And in which soever of the Divisions the Venue is laid, there shall the Declarations, Pleas, and all other Pleadings in that Cause be filed.

And for the greater Ease and Benefit of all Our Loving Subjects inhabiting within Our said Province of *New-Jersey*, and of all Persons whatsoever in taking Recognizances of Special Bail upon all Actions and Suits depending, or to be depending in Our said Supreme Court in our said Province of *New-Jersey*, *We do hereby Impower* any two of Our Judges of Our Supreme Court, of which Our Chief Justice to be always one, to grant one or more Commission or Commissions under the Seal of the said Supreme

Court, from time to time, as need shall require, to empower such and so many Persons, as by Our said Chief Justice and other Judge of Our Supreme Court aforesaid, shall be thought fit and necessary, in all and every the several Counties in Our said Province of *New-Jersey*, to take and receive all and every such Recognizance or Recognizances of Bail or Bails, as any Person or Persons shall be willing and desirous to acknowledge or make before any of the Persons so empowered, in any Action or Suit depending, or hereafter to be depending in Our said Supreme Court of Our Province of *New-Jersey*, in such manner and form, and by such Recognizance or Bail-piece as the Judges of Our Supreme Court have here-to-fore used to take the same; Which said Recognizance or Recognizances of Bail or Bail-pieces shall be Transmitted to some one of the Judges of Our Supreme Court, and by him received, upon payment of the usual Fees, and Affidavits made, according to the Directions in one Act of the Parliament in *England*, made in the fourth and fifth years of the Reign of Our Royal Predecessors *William and Mary*, King and Queen of *England, Scotland, France and Ireland, &c.*, Entituled, *An Act for taking Special Bails in the Country, upon Actions and Suits depending in the Courts of Kings Bench, Common Pleas and Exchequer at Westminster*. Which Act of Parliament We hereby Recommend to Our Judges of Our Supreme Court in Our said Province of *New-Jersey*, and to the Persons by them empowered to take and receive Recognizances of Special Bail, as a Direction to Govern themselves by, as nearly as the Circumstances of Our said Province of *New-Jersey* will admit the same to be done.

And Whereas the bringing of Juries and Evidences from the several Counties within Our Province of *New-Jersey*, will be at the great Charge and Expense of such of

Our Loving Subjects as have Causes Depending, or that will be Depending in Our Supreme Court of Our said Province of *New-Jersey*, We do, for the ease and benefit of Our said Loving Subjects, *further Ordain*, That Our Chief Justice or other Justices of Our Supreme Court, shall annually and every Year (if there be occasion) go into every County in Our said Province, except the County of *Cape-May*, and there to hold a Court for the Tryal of such Causes arising in the several and Respective Counties, as are brought to Issue in Our said Supreme Court, which Causes Our Chief Justice or other Justices of Our said Supreme Court, is hereby Impowered to hear and try, by Jurors of the said Counties, and on any Verdict in any of the said Counties, within Our said Province, Judgment to Give, at Our next Supreme Court of Judicature, to be holden at Our City of *Perth-Amboy*, or Town of *Burlington*, after such Verdict given in any of the said Counties, within Our said Province of *New-Jersey*; which Court for Tryal of Causes shall be held in our several Counties, excepting *Cape-May*, for and during a Term not exceeding *Five Days*, and at the Times and Places following, that is to say,

For the County of *Bergen*, on the second *Monday* of *May*, at *Hackinsack*.

For the County of *Essex*, on the first *Thursday* after the second *Monday* of *May*, at *Newark*.

For the County of *Somerset*, the *Thursday* next ensuing after the fourth *Monday* of *May*, at the Court-house of the same County.

For the County of *Monmouth*, the first *Tuesday* of *October*, at *Freehold*.

For the County of *Hunterdon*, the fourth *Monday* of *July*, at *Trent-Town*.

For the County of *Gloucester*, the *Thursday* next ensuing after the third *Monday* of *July*, at *Gloucester*.

For the Counties of *Salem* and *Cape-May*, the third *Monday* of *July*.

Hereby Requiring and Commanding Our High-Sheriff, Justices of the Peace, the Mayor and Aldermen of any Corporation within any of Our said Counties, and all Officers, Magisterial and Ministerial of any Courts within Our said Counties, to be Attending on Our Chief Justice, or other Justice going the Circuit, at his Coming into and Leaving their several Counties, and during his Abode within the same, on Penalty to be proceeded against according to Law, for their or any of their Neglect and Contempt of Our Royal Authority and Command hereby signified.

And it is further Ordained, That the Commissioners to be appointed for Taking of Special Bails in the respective Counties of this Province, for every Bail-piece taken by them, they shall take the Sum of *Three Shillings*, and no more. And the Commissioners for Taking of Affidavits, for every Sheet in an Affidavit, *One Shilling*, and no more.

In Testimony wherof We have caused these Our Letters to be made Patent, and the Seal of Our Province of *New-Jersey* to be thereunto Affixed. *Witness* Our Trusty & Well-beloved *William Burnet*, Esq., General and Governour in Chief of the Provinces of *New-Jersey*, *New-York*, and Territories thereon depending in *America*, and Vice-Admiral of the same, &c., in Council at *Perth-Amboy*, the Twenty-first Day of August, in the Twelfth year of Our Reign, 1725.

SMITH.

APPENDIX G.

An Ordinance for Regulating Courts of Judicature in the Province of *New-Jersey*.

GEORGE the Second, by the Grace of God, of *Great Britain, France and Ireland*, KING, Defender of the Faith, &c. Whereas the present Ordinance for Regulating Courts of Judicature is found inconvenient to the Inhabitants of this Province, *We have therefore thought fit to Ordain, and We do hereby Ordain, Direct and Impower* Every Justice of the Peace residing within any Town or County in the Province of *Nova-Casarea or New-Jersey*, to have Cognizance of all Causes and Cases of Debt and Trespass, of the Value of *Forty Shillings*, or under ; All which Causes and Cases shall and may be Heard, Tryed and finally Determined, without a Jury, by any of the said Justices of the Peace, as aforesaid, Excepting such Cases where the Titles of Land are or may be any wise concerned.

AND We do hereby further Ordain and Direct, That Process of Warning against Free-holders and Inhabitants shall be by Summons under the Hand of any of the said

Justices of the Peace, directed to the Constable of the Town or Precinct, or to any deputed by him, where the Party Complained against doth dwell or reside. Which Summons shall be served upon the Person or left at the House or Place of Abode of the Defendant, Four Days, at least, before the Time appointed for the Hearing of the Plaint. And in case the Defendant does not appear at the time appointed, on Affidavit made by the said Constable or his Deputy, That the said Summons was duly served on the Defendant's Person or left at the Defendant's House or Place of Abode, with some of the Family of the said Defendant, the Justice granting such Summons may, and shall not otherwise, proceed to Hear such Cause or Causes, and Determine the same in the Defendant's Absence, and grant Execution thereupon, directed to any of the Constables or Deputy Constables, to be levied upon the Defendant's Goods and Chattels, and for want thereof upon the Person of the Defendant, which he is hereby Impowered and Directed to execute accordingly.

And We do hereby further Ordain and Direct, That the Process against an Itinerant Person, Inmate or Foreigner shall be by Warrant from any one Justice of the Peace, to be served by any Constable or his Deputy within that County, who shall, by virtue thereof, Arrest the Party, and him safely keep till he shall be carried before the said Justice, who shall and may immediately Hear, Try, and finally Determine all such Causes and Cases of Debt and Trespass, as aforesaid, to the Value of *Forty Shillings*, or under, by Awarding Judgment and Execution. And if Payment be not immediately made, the Constable shall deliver the said Party to the Sheriff of that County, who is hereby Required and Impowered to take him into Custody,

and him safely keep until Payment be made of the same, with Charges.

Provided always, and We do hereby further Ordain and Direct, That an Appeal shall be allowed to the Justices of the same County at the next General Court of Sessions of the Peace held, for any Sum upwards of *Ten Shillings*, in all Causes or Cases cognizable before them.

And Whereas We are given to understand, that many of the Inhabitants of Our said Province live Remote from the Places in which We have appointed Our Supreme Court to be held, and that it will be of great Ease and Conveniency to the said Inhabitants that a Court be held in each County, for the Hearing, Trying and Determining of such Actions and Causes of Actions as shall arise within each of the said Counties, and Determinable by Juries of the same, We being willing and desirous to promote the Ease, Well-being and Security of all Our Loving Subjects, Inhabitants of the said Province of *New-Jersey*, and that Right and Justice might be distributed among them, and that all matters of Difference may be by their Equals and Neighbors, as nigh as the present Circumstances of Our said Province will admit, according to the good and ancient Laws and Usages of Our Kingdom of *Great Britain*, *Do Ordain and Direct*, That the County Courts for holding of Pleas, continue to be held and kept in each of the several and respective Counties of Our Province of *New-Jersey*, to Hear, and by the Verdict of Twelve Good Honest and lawful Free-holders inhabiting within the said respective County where the said Court is held, to Try and Determine all Suits, Controversies, Quarrels and Differences that may arise within the said County between Our Loving

Subjects, for any Sum above the Value of *Forty Shillings*, (Causes wherein the Right or Title of any Lands, Tenements or Hereditaments in any wise concerned, Excepted,) Which said Suits, Controversies, Quarrels and Differences shall be Tryed and Determined in the said Courts by a Jury of Twelve Good and Lawful Free-holders as aforesaid, and not otherwise.

And Whereas it may so happen, that by the Craft and Artful Practice of the Persons Concerned in the said Causes, Quarrels and Controversies Tryable in the said County Court for holding of Pleas, the said Causes, Quarrels and Controversies may be drawn, contrary to Our Royal Intention, from the Examination of the Jury, to the great Delay and Hindrance of Justice; and it may also happen, that upon special Verdicts given in Our said County Courts for holding of Pleas, and upon the Pleadings before and after Verdicts, Matters of Law may arise, *We have therefore thought fit to Ordain and Direct*, That on any Special Verdict found by a Jury in any of the said Courts, or any Joinder in Demurrer, or Pleading before or after Verdict, wherein the matter of Controversy is above Twenty Pounds, whereby any Points of Law may be in issue, (such Points of Law as are necessary to be Determined by the Judges of the said Courts, for the Regulation and Information of the Jury, only Excepted,) That then and in such Case, the Clerks of any of the said County Courts, respectively, where the same shall happen, shall make up a Record of all the Pleadings or Special Verdicts, as the case may happen, and Transmit the same to the Chief Justice of the Supreme Court, at the next Supreme Court that shall sit after such Joinder in Demurrer, Pleading made or Special Verdict given, that Judgment may be given thereon, by the Justices of Our Supreme Court.

And We do hereby Ordain and Direct, that the Courts of General Sessions of the Peace, and County Courts for holding of Pleas, shall be held and kept in each respective County within this Province, at the Times and Places hereafter mentioned, that is to say, The first and next Court of Sessions and Pleas, at the Times and Places to which the same Courts were respectively last Adjourned, and afterwards, in every year, to be Opened on the following Days, viz.

For the County of *Bergen*, at the Court-house of the said County on the second Tuesday of *June*, first Tuesday of *October*, first Tuesday of *January*, and first Tuesday of *April*.

For the County of *Essex*, at *Newark*, on the third Tuesday of *June*, fourth Tuesday of *September*, second Tuesday of *January*, and second Tuesday of *April*.

For the County of *Middlesex*, at the City of *Perth-Amboy*, on the third Tuesday of *July*, second Tuesday of *October*, third Tuesday of *January*, and third Tuesday of *April*.

For the County of *Somerset*, at the Court-house of the same County, on the second Tuesday of *June*, first Tuesday of *October*, first Tuesday of *January*, and first Tuesday of *April*.

For the County of *Monmouth*, at the Court-house of the same County, on the fourth Tuesday of *July*, third Tuesday of *October*, fourth Tuesday of *January*, and fourth Tuesday of *April*.

For the County of *Hunterdon*, at the Court-house of the same County, on the third Tuesday of *May*, first Tuesday of *August*, fourth Tuesday of *October*, and first Tuesday of *February*.

For the County of *Burlington*, at the Town-house of

Burlington, on the first Tuesday of *May*, second Tuesday of *August*, first Tuesday of *November*, and second Tuesday of *February*.

For the County of *Gloucester*, at *Gloucester*, on the second Tuesday of *June*, third Tuesday of *September*, fourth Tuesday of *December*, and fourth Tuesday of *March*.

For the County of *Salem*, on the first Tuesday of *June*, third Tuesday of *August*, fourth Tuesday of *November*, and third Tuesday of *February*.

For the County of *Cape-May*, at *Cape-May*, the third Tuesday of *May*, first Tuesday of *August*, fourth Tuesday of *October*, and first Tuesday of *February*. And shall sit any time not exceeding Four Days.

And Whereas the sitting of Our Supreme Court of Our said Province of *New-Jersey*, alternately at *Burlington* and *Amboy*, is, by Experience, found to be inconvenient, and to occasion Intricacy in the Administration of Justice, to the great hurt of several of our loving Subjects who have Causes depending in our said *Supreme Court*, For Remedy whereof, for the future, *We have thought fit to Ordain, and do hereby Ordain and Direct*, That Our Supreme Court of Our said Province of *New-Jersey* shall sit and be held at the Time unto which the said Court was last adjourn'd, and afterwards there shall one Supreme Court be held on the first Tuesday of *May*, second Tuesday of *August*, first Tuesday of *November*, and third Tuesday of *February*, at *Burlington*, yearly, for the Western Division of the said Province.

And there shall be one other Supreme Court held on the second Tuesday of *May*, third Tuesday of *August*, second Tuesday of *November*, and fourth Tuesday of *February*, at *Perth-Amboy*, yearly, for the Eastern Division of

the said Province. Which Supreme Courts shall continue for any term not exceeding Five Days, and are hereby empowered to have cognizance of all Pleas, civil, criminal and mixt, within the respective Divisions of this Province, as fully and amply, to all intents, constructions and purposes whatsoever, as the *Courts of Kings-Bench, Common-Pleas and Exchequer* have, or ought to have in Our Kingdom of *Great Britain*. In which Courts all and every Person and Persons whatsoever may commence and Prosecute any Action or Suit, Real, Personal or mixt, above the Value of *Twenty Pounds*. And any Action, Suit or controversy, information, indictment, or prosecution depending, or on which Judgment has been given in any of Our Inferiour Courts by Law Removeable, may, by *Certiorari, Habeas Corpus, Writ of Error*, or any other Lawful Writ or Method, be Removed into Our said Supreme Courts, from any of the Inferiour Courts within Our said Province.

And We do hereby further Ordain and Direct, That the Office of Clerk of the said Supreme Court of Judicature shall be kept by himself or his sufficient Deputy, at *Perth-Amboy* in the *Eastern Division*, and at *Burlington* in the *Western Division*, And that all Actions and causes of Actions arising in either the Eastern or Western Division of this Province, are to be Tryed in, and a Verdict given by the Jurors of that Division only in which the Cause of Action shall arise, as near and agreeable to the Laws, Customs and Usages in Our Kingdom of *Great Britain*, as may be.

Provided always, That no Jurors be returned, or any Tryals of *Causes* be had by the Country in the Terms of *August* or *February*, but the same shall only be for the Returns of other Writs, and Law Proceedings. And all Tryals by the Country, and Returns of Juries to the said Courts shall only be to the Terms of *May* and *November*.

And for the greater Ease and Benefit of all our Loving Subjects inhabiting withing Our said Province of *New-Jersey*, and of all Persons whatsoever in taking Recognizance of Special Bail upon all Actions and Suits depending, or to be depending in Our said Supreme Court in Our said Province of *New-Jersey*, *We do hereby Impower* any two of Our Judges of Our Supreme Courts, of which Our Chief Justice to be always one, to grant one or more Commission or Commissions under the Seal of the said Supreme Courts, from time to time, as need shall require, to empower such and so many Persons, as by Our said Chief Justice and other Judge of Our Supreme Courts aforesaid, shall be thought fit and necessary, in all and every of the several Counties in Our said Province of *New-Jersey*, to take and receive all and every such Recognizance or Recognizances of Bail or Bails, as any Person or Persons shall be willing and desirous to acknowledge or make before the Persons so empowered, in any Action or Suit depending, or hereafter to be depending in Our said Supreme Courts of Our said Province of *New-Jersey*, in such manner and form, and by such Recognizance or Bail-piece as the Judges of Our Supreme Courts have here-to-fore used to take the same: Which said Recognizance or Recognizances of Bail or Bail-piece shall be transmitted to some one of the Judges of Our Supreme Courts, and by him received, upon payment of the usual Fees, and Affidavits made, according to the Directions in one Act of Parliament in *England*, made in the fourth and fifth years of the Reign of Our Royal Predecessors *William* and *Mary*, King and Queen of *England*, *Scotland*, *France* and *Ireland*, &c., Entituled *An Act for taking Special Bails in the Country, upon Actions and Suits depending in the Courts of Kings-Bench, Common-Pleas and Exchequer at Westminster*; Which

Act of Parliament We hereby Recommend to Our Judges of our Supreme Courts in our said Province of *New-Jersey*, and to the Persons by them impowered to take and receive Recognizances of Special Bail, as a Direction to Govern themselves by, as nearly as the Circumstances of Our said Province of *New-Jersey* will admit the same to be done.

And Whereas the bringing of Jurors and Evidences from the several *Counties* within Our Province of *New-Jersey*, will be at the great charge and expense of such of our loving Subjects as have causes depending, or that will be Depending in our Supreme Courts of our said Province of *New-Jersey*, *We do*, for the ease and benefit of our said loving Subjects, *further Ordain*, That our Chief Justice or other Justice of our Supreme Courts, shall annually and every Year (if there be occasion) go into every County in our said Province, except the *County of Cape-May*, and there to hold a Court for the Tryal of such causes arising in the several and respective Counties, as are brought to Issue in our said Supreme Courts; which causes our Chief Justice or other Justices of our Supreme Courts, is hereby Impowered to hear and try, by Jurors of the said Counties, and on any Verdict in any of the said Counties, within our said Province, Judgment to give, at Our next Supreme Court of Judicature, to be holden at Our City of *Perth-Amboy*, for the *Eastern Division*, or Town of *Burlington*, for the *Western Division*, after such Verdict given in any of the said Counties, within Our said Province of *New-Jersey*. Which Courts for Tryal of Causes shall be held in our several Counties, excepting *Cape-May*, for and during a Term not exceeding *Five Days*, and at the Times and Places following, that is to say,

For the County of *Bergen*, on the first Tuesday of *April*, at *Hackinsack*, for the County of *Bergen*.

For the County of *Essex*, on the second Tuesday of *April*, at *Newark*.

For the County of *Somerset*, on the first Tuesday of *October*, at the Court-house of the same County.

For the County of *Monmouth*, on the fourth Tuesday of *April*, at *Free-hold*.

For the County of *Hunterdon*, on the fourth Tuesday in *October*, at *Trent-Town*.

For the County of *Gloucester*, on the second Tuesday in *June*, at *Gloucester*.

For the Counties of *Salem* and *Cape-May*, the first Tuesday in *June*, at *Salem*.

Hereby Requiring and Commanding Our High-Sheriff, Justices of the Peace, the Mayor and Aldermen of any Corporation within any of Our said Counties, and all Officers, Magisterial and Ministerial of any Courts within Our said Counties, to be Attending on our Chief Justice, or other Justices going the Circuit, at his Coming into and Leaving their several Counties, and during his Abode within the same, on Penalty to be proceeded against according to Law, for their or any of their Neglect and Contempt of Our Royal Authority and Command hereby signified.

And it is further Ordained, That the Commissioners to be appointed for Taking of Special Bails in the respective Counties of this Province, for every Bail-piece taken by them, they shall take the Sum of *Three Shillings*, and no more. And the Commissioners for Taking of Affidavits, for every Sheet in an Affidavit, *One Shilling*, and no more.

In Testimony whereof We have caused these Our Letters to be made Patent, and the Seal of Our Province of

New-Jersey to be thereunto Affixed. Witness Our Trusty & Well-beloved William Burnet, Esq., Capt. General and Governour in Chief of the Provinces of New-Jersey, New-York, and Territories thereon depending in America, and Vice-Admiral of the same, &c., in Council at Perth-Amboy, the 10th Day of February, in the first Year of Our Reign, 1728.

SMITH.

INDEX.

A

- Adams* (Samuel). His letter to Richard Henry Lee, stating that the New Jersey delegates were not empowered to give their voice for independence; shown to be erroneous, 197, note.
- Alexander* (James). Father of Lord Stirling; his name signed to the "Elizabethtown Bill in Chancery," 120; a member of Council, and a large proprietor of New Jersey, 127.
- Allen* (Jedidiah). Indicted for uttering seditious words of Lord Cornbury, 53; grand jury return the bills with an ignomine; informations exhibited against him, 54; applies for a postponement of his trial, which is allowed upon conditions, with which he refuses to comply; he is committed for contempt, 55.
- Allinson* (Samuel). An attorney at law, charged before the House of Assembly with taking illegal fees; is tried and acquitted, 167; appears at the bar of the Assembly, on behalf of the lawyers of New Jersey, 168.
- Answer*. To the "Elizabethtown Bill in Chancery;" its prolixity, 120; published, with a title as long as that of the Bill; names of the Counsel by whom it was signed, 121.
- Appeals* (Court of). Erected by the Queen in Council; adopted by the Constitution of 1776; confirmed and continued by act of the Legislature, 45, note.
- Assembly* (General). First meeting of, in New Jersey, 5; act of, for establishing Courts of Justice, 7; present remonstrance to Lord Cornbury, 62; his answer to it, 65 *et seq*; their replication, 68; review the address of the Lieutenant Governor and Council to the Queen, and expel William Sandford for having signed it, 71; address to Governor Burnet, asking for the appointment of a Chief Justice residing in New Jersey, 104; investigate charges against the lawyers, 165 *et seq*.
- Astiz* (Court of). The Supreme Court of the Province; held once a year at Woodbridge, 8.
- Attorneys*. First act for regulation of; not

permitted to practise without a license from the Governor, 23; required to serve an apprenticeship of at least seven years, or to pursue the study of the law four years after coming of full age, 132.

Aynsley (William). Appointed Chief Justice; takes his seat upon the bench; dies soon after his appointment, 151.

B

- Bacon* (Lord). His opinion of the qualities requisite for a Judge 184, note.
- Bancroft*. (History of the United States.) extracts from, 31, 103, note.
- Barclay* (Robert). A Scotchman, and one of the proprietors of East Jersey, 12.
- Basse* (Jeremiah). Indicted for perjury, 83; tried and acquitted, 84; stirs up prosecutions against the principal officers of the province, 97; suspended by the Supreme Court from practising as an Attorney, 98; is returned to the Assembly from the County of Cape May, 100; his Speech in the House, 101; acquires the confidence of Governor Hunter, and is appointed Attorney General; his commission renewed by Governor Burnet; his death, and will, 102.
- Bayard* (Col. John). A pupil of the Rev. Samuel Finley, a member of the old Congress, and Speaker of the House of Representatives of Pennsylvania, 191.
- Bolcher* (Governor), 151.
- Bernard* (Governor), 151.
- Billog* (Christopher). Eldest son of Thomas Farmer; marries the daughter of Captain Christopher Billog; adopts her father's name; commands a corps of New-York loyalists during the revolutionary war; is taken prisoner, confined in the jail at Burlington, and treated with great severity, 126; his estate is confiscated after the peace; he goes to the Province of New Brunswick, becomes a member of the Assembly, and of Council, and dies at St. John's, 129.
- Binsay* (Mr.) Extract from his Eulogium on Chief Justice Tilgham, 112, note.
- Bloomfield* (Joseph). Governor of New Jersey, 126, 173.

Boudinet (Elias). President of Congress under the Confederation, member of the House of Representatives after the adoption of the Constitution, and the first Director of the Mint of the United States; his sister the wife of Richard Stockton, 199, note.

Boudinet (Elihu). Of Newark; Richard Stockton, William Griffith, and Alexander C. McWhorter, students in his office, 189, note.

Brougham (Lord). Extract from his Speech in the House of Commons on Law Reform, 3; notice of his Speech on Local Courts, 9, note.

Burke. Extracts from his Speech on Conciliation with America, 91, 92, note.

Burnet. Succeeds Hunter as Governor of New Jersey, 104; takes especial delight in the Court of Chancery, 107; a son of the celebrated Bishop Burnet; named after the Prince of Orange; his fortune wrecked in the South Sea scheme; made Governor of Massachusetts and New Hampshire; of convivial disposition and levity of manners; his death and character, 108, note.

C

Campbell (Lord). Extracts from his lives of the Lord Chancellors, 81, note; 109, note; 117, note.

Carolina. Description of the Province of, by Daniel Coxe; first published in 1732, and republished in 1741; contains a "curious discovery" of an easy communication between the river Mississippi and the South Sea, 184; note; plan of Union for the North American Colonies proposed in the preface, 135; Dr. Franklin's "Albany Plan of Union," little more than a transcript of it, 137.

Carolina. Patent for, obtained by Sir Robert Heath, Attorney General to Charles the first; declared to be void; Dr. Coxe procures an assignment of it, 133; called *Carolina* in the original patent, 134.

Carteret (Governor). Seeks to extend the jurisdiction of the municipal Courts of Bergen and Woodbridge, 6; purchases an interest in the Elizabethtown grant, 123.

Carteret (Lady Elizabeth). "Fashionable and kind-hearted;" Elizabethtown named after her, 13, 123.

Carteret (Sir George). One of the original proprietors of New Jersey, 5; concessions of Berkeley and Carteret, 18.

Chancery (Court of). Recognized as a separate and distinct tribunal, in the first act for the establishment of Courts, 11; made part of the Court of Common Right, but afterwards separated from it, 14; never a popular favorite in this country, 109; in England always a fair subject for the pen of the satirist, 109; note; becomes so unpopular in New-York, that no business is transacted in it for many years, 110; first established in Pennsylvania by Governor Keith, 48; difficulty with John Kinsey a Quaker lawyer, 111; considered a "nuisance" and entirely laid aside, 112; has encountered less hostility in New Jersey than in her sister states, 48; ordinance of Lord Cornbury for the erection of it, 113; first ordinance for the regulation of fees in, 114; a committee of Council appointed to revise and moderate

fees, and perform their task with an unsparing hand, 115; committee directed to inquire into the abuses which had crept into the practice of the Court, 116; the abuses pointed out, and the remedies proposed by them, 117; message of Governor Franklin in relation to Court of Chancery, 123; sends the Assembly list of officers in the Court, for which salaries ought to be provided, 124; ordinance of Governor Franklin, 125; the Constitution of 1776 adopts the Court, and the Legislature confirm its powers, 48; office of Governor and Chancellor united until the adoption of the Constitution of 1844; effect of this arrangement, 126.

Clarke (Abraham). His object in introducing the bill known as "Clarke's Practice Act," 115.

Common Pleas (Courts of). First established by the Ordinance of Lord Cornbury; when and where held; their jurisdiction, 43; account of the origin of this Court by Mr. Griffith erroneous, 47.

Common Right (Court of). Came in place of the Court of Assize; name first occurs in the instructions to Gawen Lawrie, Deputy Governor of East Jersey, 12; to consist of "twelve members, or six at the least;" held first at Elizabethtown, but afterwards at Perth Amboy, 13.

Common Law, brought from England by our fathers; their birthright and inheritance, 15; reached its full vigor about the period of the first settlement of New Jersey, 16, note.

Concessions, of Berkeley and Carteret, the first Proprietors of New Jersey; proclaimed religious liberty in its fullest extent, and freedom from taxation without the consent of the people, 26; published and circulated in England and throughout the Colonies, 19; of the Proprietors of West Jersey, still more liberal; their provision for liberty of conscience, 27; for freedom from taxation without the consent of the General Assembly, 26; their language in reference to trial by jury, 48; members of Assembly to be chosen by ballot, 26; to receive instructions from those who sent them, and covenant for obedience under hand and seal, 30; these Concessions to be read at the opening and dissolving of every Assembly, and writ on fair tables in every hall of justice in the Province, 31.

Cooper (Joseph). A member of Assembly from Gloucester County, during the administration of Governor Morris, 143.

Cornbury (Lord). Cousin of Queen Anne, and grandson of the illustrious Clarendon; first Royal Governor of New Jersey, 40; forbidden by his Instructions, but authorized by his Commission to establish Courts, 41; his Ordinance for the establishment of Courts, 42; its provisions, 43 *et seq.*; this Ordinance the foundation of our Common Law Courts, 45; Mr. Griffith not aware of the existence of it, 46; a copy of it found in the State Library, 50; by whom probably framed, 48; his disputes with the Assembly, 62; their remonstrances presented to him by Samuel Jennings, and his reception of it, 64; his answer, 65 *et seq.*; reply of the Assembly, 68; prevails upon the Lieutenant Governor and Council to unite in an address to the Queen justifying his conduct, 69; his removal

and character, 70, note; thrown into jail by his creditors, and remains there, until elevated to the peerage by the death of his father, 83.

County Courts first established in East Jersey, 7; when, and by whom held; their jurisdiction; appeals from their judgments, 8; to be held four times a year in each County, 11; the Judges to be the Justices of the Peace in the respective Counties, 12; in West Jersey, when established; when and by whom held, 24; their jurisdiction unlimited, in civil and criminal cases, *ib.*; the great Courts of the Province, 25.

Courts, Establishment of, coeval with the first settlement of the State, 4; first act of Assembly for the erection of, 7; modified after the transfer of East Jersey to the twenty-four Proprietors, 11; of West Jersey under its Proprietary Government, 24; established by Ordinance of Governor and Council, after the Surrender, 43; first ordinance for the erection of Courts, and its provisions, 43; these Courts continued without any essential change to the Revolution; have retained all their leading features to this day, 45.

Coxe (Dr. Daniel). A great Proprietor of West Jersey, and Governor of that Province for some years; father of Daniel Coxe, one of the Justices of the Supreme Court, 132; procures an assignment of the original Patent for Carolina, and addresses a memorial to King William claiming the Province embraced in it, 133; the memorial is referred to the Attorney General, who reports in favor of the validity of his title, 134.

Coxe (Daniel). Son of Dr. Daniel Coxe; signs the address of the Lieutenant Governor and Council to the Queen, 70, note; is chosen speaker of the Assembly, 92; absents himself from the House, with most of his political friends, 98; the Assembly choose a new speaker, and expel the absent members, 99; Governor Hunter, in a message to the Assembly, condemns the conduct of the late speaker, and the House concur with him, 100; is appointed an associate Justice of the Supreme Court, 132; revives his father's claim to Carolina, and makes various efforts to colonize it; publishes a description of the country, which he calls *Carolana*, 134; his preface to the work contains a plan of union for the North American Colonies, 135; extract from it, 136, note; the same with that, afterwards proposed by Dr. Franklin at Albany, and which has been so celebrated, 137; remains upon the bench until his death, and discharges his duties with ability and integrity, *ib.*

Coxe (Daniel). A member of Council during Governor Franklin's administration; chief agent in organizing the Board of Refugees or Royalists, in New-York; made President of the Board; reason assigned for putting him in the chair, 185, note.

Cutburt (Alexander). Of Canada, married a daughter of Richard Stockton, 199, note.

D

Dickinson (John). At a meeting of the Philadelphia bar, opposes a resolution to transact business without the use of stamps, 164.

Dudley (Joseph). Chief Justice of New-York, and afterwards Governor of Massachusetts, 74.

E

East Jersey. Courts in, 7, 8; divided into Counties, and Townships, 11, note; laws of under the Proprietary Government, 205 *et seq.*; severity of the criminal code, 267; acts for the promotion of education, 268; thanksgiving days appointed by act of Assembly, 269.

Ellesmere, Lord Chancellor in the reign of Queen Elizabeth; the vigor with which he corrected prolixity in chancery pleadings, 117, note.

Elizabethtown, named after Lady Carteret; long the capital of the Province of East Jersey, 13.

Elizabethtown Bill in Chancery. Embodies much of the early history of the State, 24; the most important bill ever filed in the Provincial Court of Chancery, 119; contains fifteen hundred sheets; printed with the accompanying documents, making a folio volume of one hundred and sixty pages; its title, 120; drawn up with great ability, 122; cause never brought to a final hearing, 123.

Elmer (Ebenezer). Father of the Hon. Lucius Q. C. Elmer of Bridgeton; assisted in the destruction of the tea at Greenwich, 179.

Essex. Reply of the Grand Jury of, to the charge of Chief Justice Smyth, 175 *et seq.*; riots against the lawyers, 171; the rioters promptly punished, 172.

Ewing (James). Father of the distinguished Chief Justice of New Jersey; assisted in the destruction of the tea at Greenwich, 171.

F

Farmar (Thomas). An associate Justice of the Supreme Court, 92; removes from Staten Island to Amboy, 126; represents for many years in the Assembly the County of Middlesex, 127; is made Chief Justice; was insane for some years; his eldest son assumed the name of Christopher Billou, and became a noted character during the Revolutionary war, 128.

Field (Robert). Of Whitehill, in the County of Burlington; married a daughter of Richard Stockton, 199, note.

Field (Abby). The only surviving daughter of Richard Stockton; is living at Princeton, 199, note.

Foley (Rev. Samuel). A ripe scholar, and skillful teacher, 190; establishes a school at Nottingham, in Maryland, which becomes a very celebrated one, *ib.*; some of the most distinguished men in the country educated here, 191; is President of the College of New Jersey; upon his death Dr. Witherspoon is chosen to succeed him, 193.

Ford (Gabriel, H.). A student in the office of Abraham Ogden; for many years a Judge of the Supreme Court; still living in the full enjoyment of his faculties, 169, note.

Franklin (Dr.). His "Albany Plea of Union," little more than a transcript of the design of Daniel Coxe, sketched many years before, 137; his interview with Robert Hunter Morris in New York, 147.

Franklin (Governor). His Message to the Assembly in reference to the Court of Chancery, 123; his Ordinance establishing the Court, 125; his Message to the Assembly, upon the subject of the riots against the lawyers, 172.

G

Galloway (Joseph). A celebrated loyalist of Pennsylvania; a correspondent of David Ogden, 185.

Gates (Horatio). Letter to, from William Smith, the Provincial Historian of New York, 155.

General Sessions of the Peace (Court of). Established by Ordinance of Lord Cornbury; to be held four times a year in every County, 43.

Gordon (Thomas). A native of Pitlochrie in Scotland, 86; emigrates to New Jersey; settles in the neighborhood of the "Scotch Plains;" becomes a large Proprietor, and fills various offices of honor and trust in the Province; represents Perth Amboy in the Assembly, and is chosen Speaker of the House, 87; is appointed Chief Justice of the Supreme Court upon the resignation of Mompesson; is made Receiver General and Treasurer of the Province, and relinquishes his seat upon the bench; is appointed Commissioner to execute the office of Attorney General; his death, 88.

Grakeme. A Scotchman, and the author of the best Colonial History of the United States that has yet appeared, 86; extracts from his History, 31, note; 33; 71, note; 86.

Grand Jury, of Essex. Their spirited reply to the charge of Chief Justice Smyth, 175; of Cumberland, refuse to find indictments against those who were concerned in the destruction of the tea at Greenwich, 181.

Griffith (Alexander). First Attorney General for the Province of New Jersey, 52; suspended for "suadry misdemeanors, neglects, and contempts of duty," 88.

Griffith (William). The learned Compiler of the Law Register, 46; a student in the office of Elisha Boudinot of Newark, 189, note.

H

Hall (William), 80, note.

Hallam. Extracts from his Constitutional History of England, 9, note, 17, note.

Hasard (Ebenezer). Postmaster General of the United States, and author of Historical Collections; a pupil of the Rev. Samuel Finley, 191.

Henry (John). A member of the old Congress, a Senator of the United States, and Governor of Maryland; a pupil of the Rev. Samuel Finley, 191.

Heavills (Customs at). Erected by the agent of the Duke of York, on all vessels ascending the Delaware to New Jersey, 32; argument against, 33, *et seq.*

Hoffman (Josiah Ogden). A student in the office of Abraham Ogden; Attorney General of New York, and Judge of the Superior Court at the time of his death, 189, note.

Hollingshead (John). Indictment against for uttering seditious words of Lord Cornbury,

53; grand jury return it with an *ignoramus*; information exhibited against him, 54; applies for a postponement of his trial; the motion is allowed, but upon conditions with which he refuses to comply; he is committed for contempt, 53; is tried and acquitted, 56.

Hooper (Robert Lettice). Appointed Chief Justice upon the death of William Trent, 126; is succeeded by Thomas Farmar, *ib.*; is again appointed Chief Justice, 126; continues to act until his death, 129.

Hopkinson (Francis). A delegate from New Jersey, and a signer of the Declaration of Independence; appears in Congress, and presents the instructions under which he and his colleagues were appointed, 197, note.

Howell (Richard). Governor of New Jersey; assisted in the destruction of the tea at Greenwich, 179.

Huddy (Hugh), 80, note.

Hume. Extract from his Essay on the origin of government, 3, note.

Hunter (Rev. Andrew). A chaplain in the American Army during the whole of the Revolutionary war; assisted in the destruction of the tea at Greenwich; his second wife a daughter of Richard Stockton, 179.

Hunter (Rev. Andrew). Pastor of the Presbyterian church in Greenwich, in the County of Cumberland; an ardent Whig, 179, note.

Hunter (Governor). Succeeds Lord Lovelace; his first Address to the House of Assembly, 79; a native of Scotland; marries a peeress; a friend of Addison and Swift; appointed Lieutenant Governor of Virginia; is taken prisoner by the French; is appointed Governor of Jamaica; a man of some literary pretensions, 89, note; his address on behalf of the Quakers, 94; claims the right to act as Chancellor without the aid of his Council, 114.

I

Indians. Their right to the soil always respected in New Jersey; the Six Nations at Fort Stanwix confer upon New Jersey the title of the *Great Deer of Justice*, 5, note.

Ingoldsby (Lieutenant Governor). Unites with the Council in an address to the Queen, justifying the conduct of Lord Cornbury, 69; acts as Governor upon the death of Lord Lovelace; a dull, heavy man, 78; remonstrances are made to the Queen for his removal, to which she at last yields, 79.

Institutio Legalis, of Newark, a sort of Moot Court, kept up for many years, 139, note.

J

Jamieson (David). Appointed Chief Justice in place of Mompesson, 89; a popular lawyer of New York; distinguished himself in defence of McKemie the Presbyterian clergyman; is Chief Justice during the whole of Governor Hunter's administration, 91; is indicted in the Court of Quarter Sessions of Burlington; delivers a speech in the Supreme Court, 94; indictment removed to the Supreme Court, and quashed, 97; his charge to the Grand Jury at Burlington, 103; continued in office by Governor Burnett; the Assembly complain of his residing

in New York, and address Governor Burnet upon the subject, 104; he is superseded, and William Trent appointed in his place, 105.

Jenings (Samuel). Speaker of the Assembly, 63; presents their address to Lord Cornbury, 62; was Governor of West Jersey under the Proprietary government; his character, 63, note.

Johnson (Robert G.). One of the Vice Presidents of the New Jersey Historical Society; has preserved the names of those who were concerned in the destruction of the tea at Greenwich, 178.

Jones (Nathaniel). Is appointed Chief Justice of New Jersey on the death of Aynsley, 151; arrives at Amboy where he receives his commission; makes a visit to Elizabeth-town; his reception there; at the next Term of the Supreme Court, prays that the oath of office may be administered to him, 152; Robert Hunter Morris claims to be still Chief Justice; the matter is referred to the Court, 153; Judge Nevill decides against Jones; he puts his commission in his pocket, and returns to England, 154.

Judges, during the Colonial government were clad in official robes, and affected much state; costumes worn by them before the Revolution, 20, note.

Justice's Courts, and convenient tribunals; origin of, 8.

Justices of the Peace, their jurisdiction in civil cases, by the ordinance of Lord Cornbury, 143.

K

Kearney (Philip). Letter to, from David Ogden, 162.

Keith (Sir William). Governor of Pennsylvania; establishes a Court of Chancery, 110; orders the hat of John Kinsey, a Quaker lawyer, to be taken off in Court; excitement caused by it; a rule of Court adopted, allowing Quakers to wear their hats, 111.

Killingworth (Thomas). Informations against for speaking contemptuously of the Church of England; tried and acquitted, 56.

Kinsey (John). Father of John Kinsey, Chief Justice of Pennsylvania; chosen speaker of the Assembly upon the expulsion of Daniel Coxe, 99.

Kinsey (John). Chief Justice of Pennsylvania, and father of James Kinsey, Chief Justice of New Jersey, 99, note; a Quaker lawyer; wears his hat in the Court of Chancery; it is ordered to be taken off; great offence given to the Quakers by it, 111.

Kinsey (James). Chief Justice of New Jersey, 99, note; appears at the bar of the Assembly, to plead the cause of the lawyers of New Jersey, 168.

Kitchell (Aaron). Member of Assembly from the County of Morris; introduces the fable of the fox and geese, in answer to a speech of Abraham Ogden, 188, note.

L

Lawrence (John). A distinguished lawyer of Burlington, father of the gallant Capt. James Lawrence of the navy, 167, note.

Laws, early, few and simple, 15.

Laws, of East Jersey under the Proprietary Government, 205, *et seq.*

Laws, of West Jersey under the Proprietary Government, 205, *et seq.*

Lawyers, New Jersey blessed by the absence of, 22; soon found their way into the colony, 23; of New Jersey, the first to adopt measures of opposition to the Stamp Act, 159; resolutions of a meeting of the bar held at Amboy, and the effect of them, 160; questions proposed to the bar by Chief Justice Smyth, and their answers to them, 161; another meeting of the bar held at New Brunswick, 162; resolutions adopted, bold and spirited, 163; complaints against the lawyers of New Jersey, 164; causes of the excitement which existed, 165; the Assembly investigate the charges, 166; the lawyers address a memorial to the House, praying leave to be heard at their bar, 167; leave granted, and the hearing takes place, 168; the lawyers make charges against Samuel Tucker; they are investigated by the House, and Mr. Tucker found guilty, 170; riots in Monmouth and Essex, 171; rioters punished in Essex, but screened in Monmouth; message of Governor Franklin to the Assembly upon the subject, 172; in the Revolution, a majority of the lawyers were Whigs; but the "giants of the law" are said to have been nearly all loyalists, 181; thorough-bred lawyers, a race of men that became numerous in New Jersey, 182.

Leeds (Daniel). Signed the address of the Lieutenant Governor and Council to the Queen, justifying the conduct of Lord Cornbury, 70, note.

Legrange (Bernardus). An attorney at law, charged before the Assembly with having taken illegal fees; is tried and convicted, and reprimanded by the speaker at the bar of the House, 166; procures certificates of the Judges of the Supreme Court, by which he is wholly exonerated, 167.

Livingston (William). Governor of New Jersey; puts his name to the answer to the Elizabethtown Bill in Chancery, 121; Sedgwick's life of, referred to, 197, note.

Logan (James). Letter to, from William Penn, introducing Roger Mompesson, 58; extracts from his letters to Penn, 59.

Lovell (Lord). Governor of New Jersey; succeeded Lord Cornbury; congratulatory address to him by the Council, 77; his sudden and premature death, 78.

M

Magazine (The New American), printed by James Parker, published at Woodbridge, and edited by Samuel Nevill; first periodical in New Jersey, and second magazine of the kind on the Continent, 157.

Martin (Alexander). Governor of North Carolina, and a delegate to the Convention which framed the Constitution of the United States; a pupil of the Rev. Samuel Finley, 157.

Massachusetts, generally in advance of the other Colonies; but her lawyers deem it impossible to conduct judicial business in open disregard of an act of parliament, 163.

McKemie (Francis). A Presbyterian clergyman, tried in New York for preaching without a license; he is acquitted, but the Court

refuse to discharge him, until he has paid the fees of prosecution, 72.

McWhorter (Rev. Alexander), of Newark, a distinguished clergyman; a pupil of the Rev. Samuel Finley, 191.

McWhorter (Alexander C.). An eminent lawyer; a student in the office of Elisha Boudinot of Newark, 189.

Minutes of the Supreme Court, contain full reports of some of the early trials; a mine of curious and valuable information, 51, note.

Mompesson (Rev. William). Rector of Eyam in Derbyshire during the time of the plague in London; performed the functions of physician and priest; extracts from a letter written by him to Sir George Saville, 57, note.

Mompesson (Roger). The first Chief Justice of the Supreme Court of New Jersey, 51; supposed to have descended from the Rev. William Mompesson, Rector of Eyam, 57; arrives in Philadelphia, bearing a letter from William Penn to Samuel Logan, 58; appointed Chief Justice of Pennsylvania, and probably never took his seat upon the bench, 60, note; is made Chief Justice of New Jersey and New York, 60; a member of Lord Cornbury's Council, 61; puts his name to the address of the Lieut. Governor and Council to the Queen, 70; Assembly comment with much severity upon his conduct, 71; upon the removal of Cornbury surrenders his commission, 71; his conduct as Chief Justice of New York, 72; presides at the trial of Francis McKemie, the Presbyterian clergyman, who was indicted for preaching without license, *ib.*; marries a daughter of William Pinborne, 75; is restored to office upon the retirement of Thomas Gordon, 89; upon the arrival of Governor Hunter, again surrenders his commission, *ib.*

Monmouth, riots in, against the lawyers, 171; riots screened from punishment, 173; tories in Monmouth, 173.

Montgomery (Governor). His aversion to the Court of Chancery, 115.

Monthly Court of small causes (first establishment of), 7; the original of the Justice's Court, 8; either party at liberty to demand a jury, 11.

Morris (Governor). Grandson of Governor Lewis Morris, 143.

Morris (Lewis). Governor of New Jersey, expelled from the Council by Lord Cornbury, 61; draws up the remonstrance of the Assembly, 62; appointed Chief Justice of New York, 91; his early years, 138; his character, 140; appointed Governor of New Jersey, 141; difficulties with the Assembly, 142; his death, 143.

Morris (Lewis). One of the signers of the Declaration of Independence, a grandson of Governor Morris, 143.

Morris (Robert Hunter). Chief Justice of the Supreme Court, 137; son of Governor Lewis Morris, 138; held the office of Chief Justice twenty-six years; his education, appearance, manners, 144; his character as a Judge, 145; visits England, *ib.*; it is proposed to make him Lieutenant Governor of New York; for some reason the appointment not made, 146; is appointed Governor of Pennsylvania, 147; interview with Dr. Franklin, *ib.*; his difficulties with the Assembly of

Pennsylvania, 148; tenders his resignation as Chief Justice, in a letter to the Lords of Trade, 149; names Richard Saltar as his successor; his resignation not accepted; relinquishes his situation as Governor of Pennsylvania, makes another visit to England, 150; during his absence, William Aysley appointed Chief Justice, 151; controversy with Nathaniel Jones as to the Chief Justiceship, 153; decision in favor of Mr. Morris, 154; his sudden and melancholy death, 155.

Murray (Joseph). A distinguished lawyer of New York; signs the Elizabethtown Bill in Chancery, 120.

N

"*Negro plot*" in New York, cruelties attending it; probably the whole affair a delusion, 131.

Neuill (Samuel). Second Judge of the Supreme Court; had been Editor of the London Morning Post, before coming to America, 155; he was connected by marriage with Peter Sonmans, and inherited his proprietary interests in East Jersey; comes to New Jersey, and takes up his residence at Amboy; becomes a member of the Assembly, and is for many years Speaker of the House, 156; is appointed a Judge of the Supreme Court, and for sixteen years discharges its duties with fidelity; publishes the laws of the Province in two volumes; edits "The New American Magazine," 157; his death, 158.

New Jersey. Her history divided into three periods, 4; her treatment of the Indians, 5, note; an insurrection among the slaves, the only instance of the kind in her annals, 130; the condition of slaves in, 131; allowed to have a separate Governor from New York, 139; her resistance to the Stamp Act, 159.

Norburis (George). His quaint tract on "the abuses and remedies of Chancery;" extract from it, 118.

North Carolina. "Regulator" in rise in arms to exterminate the lawyers; in the Revolution most of them join the royal party, 173.

Nottingham, Lord Chancellor in the reign of Charles II; his remark about the Statute of Frauds, 17, note; has been called the Father of Equity, 109, note.

O

Ogden (Abraham). Son of David Ogden; a distinguished lawyer after the Revolution; District Attorney of the United States; a member of the Legislature, and advocates the calling of a Convention to revise the Constitution, 188.

Ogden (David). Son of Josiah Ogden; brother of Dr. Jacob Ogden; born in Newark, 182; a graduate of Yale College; reads law in New York; practises in New Jersey; rises rapidly in his profession; is appointed a Judge of the Supreme Court, 183; upon the breaking out of the Revolution, seeks protection from the British in New York, 184; an active loyalist; a member of the Board of Refugees; a correspondent of Joseph Galloway; draws up a plan for the government of the Colonies after their sub-

mission to Great Britain, 185; after the peace goes to England; his estate confiscated; receives compensation from the British government; returns to the United States, and takes up his residence on Long Island, 187; his death, and family, 188.

Ogden (David B.). A distinguished lawyer of New York; son of Samuel and grandson of David Ogden; pursued his profession for some years in New Jersey, 189.

Ogden (Isaac). Son of David Ogden; Clerk of the Supreme Court; joined the British in New York; went to England; settled in Canada, and became a Judge of the Supreme Court, 188.

Ogden (Samuel). Son of David Ogden, and father of David B. Ogden; member of the Legislature of Pennsylvania, and of the Convention that framed her Constitution of 1790, 189.

Oliver (Thomas). Governor of West Jersey; dispensed justice "sitting on the stumps in his meadows," 20.

Ordinances of Governor and Council, must look to them for the Constitution of our Courts, after the Surrender, 42.

Ordinance of Lord Cornbury, the foundation of our whole judicial system, 42; its provisions, 43, *et seq.*; not to be found in the books of Commissions in the office of Secretary of State, 47; a copy of it found in the State Library, 50; probably framed by Roger Mompesson, *ib.*

Ordinance of George II., not the foundation of the jurisdiction of our Courts, 47; little more than a copy of the original ordinance of Lord Cornbury; continued in force but a single year, 48.

Oyer and Terminer (Court of). Its first establishment in West Jersey; of whom composed, 28.

P

Parker (James). Prints "The New American Magazine," 157.

Penn (William). Assists in the preparation of the argument against the customs at the Hoarkills, but probably not the sole author of it, 32, note; his letter to James Logan, recommending Roger Mompesson, 58; extracts from other letters of his to Logan, 59, note; presides at a trial for witchcraft in Pennsylvania, 103, note.

Penn and Mead (Trial of). At the Old Bailey, for preaching to a tumultuous assembly, 29, note.

Perth Amboy. Named in honor of the Earl of Perth, 13; a favorite project of the Proprietaries, 14, note.

Petit (Charles). Employed by the owners of the tea destroyed at Greenwich, 179.

Philadelphia (Lawyers of). Hold a meeting upon the subject of the Stamp Act, 163; but three individuals in favor of carrying on business without stamps, 164.

Pinkorne (William). Originally a merchant in the city of New York; became a member of Council, and a Judge of the Supreme Court in that Province; removes to New Jersey, 74; is appointed Second Judge of the Supreme Court; his connexion with Roger Mompesson, 75; signs the address from the Lieutenant Governor and Council

to the Queen; is denounced by the Assembly in unsparing terms, 76; their address however to be taken with some grains of allowance, 77; acts as Governor upon the removal of Lieut. Governor Ingoldsby; is superseded by the arrival of Governor Hunter, 79; his removal from the Council, 80, note; retires into private life, 81; his death, 82.

Pinkorne (John). Son of William Pinkorne, an Attorney at Law and Clerk of the House of Assembly; did not long survive his father, 82.

Pomphrey (Walter). Indictment against, for speaking seditious words of Lord Cornbury, 53; returned with an *ignoramus*; an Information filed against him for the same offence, 54; tried and a verdict of guilty rendered, but the Court did not dare to pronounce judgment, 55.

Q

Quakers. Settlement of West Jersey by, 31; Lord Cornbury's attacks upon them, 66; their reply to him, 69; controversy with regard to accepting their affirmation, in lieu of an oath, 93 *et seq.*; the same question produced serious difficulties in Pennsylvania, 96, note.

Quaker legislation. First essay of, to be found in the West Jersey Concessions, 31, note.

Quarry (Robert). Signed the address of the Lieut. Governor and Council to the Queen, justifying the conduct of Lord Cornbury; a member of Council in five of the Colonies at one time, 70, note.

R

Read (Charles). Succeeds Robert Hunter Morris as Chief Justice; recommended by Lord Stirling; holds the office but a few months; consents to take again the place of Second Judge, which he had previously held, 158.

Read (George). Of New Castle, one of the counsel retained on behalf of those concerned in the destruction of the tea at Greenwich, 180.

Reading (John). Upon the death of Gov. Belcher, he became entitled, as the first named of the Councillors, to act as Governor; was reluctantly prevailed upon to assume the duties, 151.

Read (Joseph). Appears at the bar of the Assembly, to plead the cause of the lawyers of New Jersey; became Adjutant-General of the Continental army, a member of Congress, and President of the Executive Council of Pennsylvania; his noble reply to the offer made to him upon condition of his effecting a reunion between the Colonies and the Crown, 168; born at Trenton, educated at Princeton, read law with Richard Stockton, pursued his profession for some years in New Jersey, and then removed to Philadelphia, 168, note.

Regulators, in North Carolina, take up arms to exterminate lawyers; in the Revolution, most of them enlisted under the king's banner, 173.

Revelt (Thomas). One of Lord Cornbury's Council; signed the address of the Lieut.

Governor and Council to the Queen, 70, note.

Rhode Island. Burning of the British Schooner Gaspee, by the Whigs of: Commissioners appointed to examine into the affair; continued in sessions several months without procuring any evidence; a Court of Inquiry only; the "Court" alluded to, in the address of the first Congress to the inhabitants of the Colonies, 174.

Rush (Dr. Benjamin). Of Philadelphia, a pupil of the Rev. Samuel Finley, 191; one of the signers of the Declaration of Independence; married a daughter of Richard Stockton, 199, note.

Rush (Judge). A brother of Dr. Benjamin Rush; a pupil of the Rev. Samuel Finley, 191.

Rush (Julia). A daughter of Richard Stockton; married to Dr. Benjamin Rush; died at an advanced age in Philadelphia, 199, note.

S

Sandford (William). Signs the address of Lieut. Governor and Council to the Queen, justifying Lord Cornbury; refuses to acknowledge his fault, 70, note; is expelled from the Assembly in consequence of it, 71.

Sellar (Richard). An associate Judge of the Supreme Court; recommended by Robert Hunter Morris as his successor in the office of Chief Justice, 150.

Scotch emigrants to New Jersey, of a class superior both to the Dutch and English; many of them men of family and education, 86.

Selden. Extract from his "Table Talk," 109, note.

Sergeant (Jonathan Dickinson). One of the counsel on behalf of those who were concerned in the destruction of the tea at Greenwich, 179; born near Princeton; a graduate of the College of New Jersey; read law with Richard Stockton; a member of the Provincial Congress, and one of the committee that drafted the first Constitution of New Jersey; his house in Princeton burnt by the British army; made Attorney General of Pennsylvania, and removes to Philadelphia; died of the yellow fever in 1793; father of the Hon. John Sergeant of Philadelphia, 180, note.

Sheriffs. First provided for, and process out of the County Courts directed to them, 12.

Slavery, in New Jersey; never did it exist in a milder form, 131.

Slave Insurrection, in New Jersey; the only instance of the kind recorded in our annals, 130; in New York, cruelties attending, 131.

Smith (Samuel Stanhope). Vice President of the College of New Jersey; pronounces a funeral discourse upon Richard Stockton; extracts from it, 200.

Smith (William). Puts his name to the "answer" to the Elizabethtown bill in Chancery; became Chief Justice of New York, and after the Revolution Chief Justice of Canada, 324; his letter to Horatio Gates, 155, 158.

Smyth (Frederick). The last Chief Justice of the Colony of New Jersey; his appointment, 159; desires the members of the Bar

to attend him, to consult about the Stamp Act, 160; the questions which he proposes to them, with their answers, 161; one of the Commissioners to examine into the affair of the burning of the British Schooner Gaspee, 174; a firm and consistent loyalist; his charge to the Grand Jury of Essex, 175; presides at a Court of Oyer and Terminer in Cumberland, and charges the Grand Jury strongly upon the destruction of the tea at Greenwich, 180; removed to Philadelphia when the Revolution broke out, and died there, 181.

Sonnans (Arent). One of the twenty-four Proprietors; father of Peter Sonnans; shot by a highwayman on his journey from Scotland to London, 84.

Sonnans (Peter). Son of Arent Sonnans; a native of Holland; educated at Leyden; succeeds to his father's estates in New Jersey; indicted for perjury, tried and acquitted; the Assembly charge that he owed his escape to a packed jury, 84; publishes a vindication of himself which has come down to us, and is a production of some vigor, 85.

Sons of Liberty. An association which had sprung up in most of the Colonies; in favor of setting the provisions of the Stamp Act at defiance, 162; unite in a written request to the members of the Bar, that they would proceed to business as usual without stamps, 163.

Southard (Samuel L.). Advocates before the Legislature a claim made by a remnant of the Delaware tribe of Indians; extract from his speech, 5, note.

Stacey (Mablon). His plantation of eight hundred acres, on both sides of the Assanpink, purchased by William Trent, 105.

Stamp Act. Measures adopted by the lawyers of New Jersey, in opposition to, 159; their example followed in other Colonies, 160; the stamps arrived but no one would purchase them, 162; another meeting of the Bar, and the resolutions adopted, 163; repeal of the Stamp Act render further proceedings unnecessary, 164.

Stirling (Lord). Addresses a letter to Gov. Franklin, recommending Charles Read as a suitable person for Chief Justice, 158.

Stockton (John). Father of Richard Stockton; a liberal friend of the College of New Jersey; presiding Judge of the Court of Common Pleas of Somerset, 190.

Stockton (Richard). Born at Princeton; great pains bestowed on his education; sent to the academy of the Rev. Samuel Finley at Nottingham in Maryland, 190; received the honors of the first commencement of the College of New Jersey, 191; reads law with David Ogden; pursues his profession as Princeton with distinguished success; visits England, 192; is requested to make a personal application to Dr. Witherspoon to solicit his acceptance of the Presidency of the College of New Jersey; his journey to Scotland for that purpose; the result of his visit, and his agency in securing the services of Dr. Witherspoon, 193; his reception in Scotland; returns to America; is made a member of Council, and a Judge of the Supreme Court; is elected a member of the general Congress, 196; is present during the

debates which preceded the Declaration of Independence; expresses his concurrence in the measure; puts his name to that immortal instrument, 197; his residence at Princeton in the route of the British Army; compelled to fly with his wife and children; the place of his retreat discovered by a party of refugee loyalists; is stripped, plundered, taken to New York, and thrown into a common jail, 198; his sufferings call for the interposition of Congress; his death, 199; leaves two sons, Richard and Lucius Horatio, who became eminent lawyers, and four daughters, 199, note; his character, as drawn by Dr. Smith in his funeral discourse, 200.

Stockton (Mrs.). The wife of Richard Stockton, and sister of Elias Boudinot; a woman of a cultivated mind, and of fine literary taste; the writer of a number of poetical effusions, 199, note.

Supreme Court. Its jurisdiction defined by Lord Cornbury's ordinance; has remained without change to the present day, 44; two Supreme Courts established, one for East and the other for West Jersey, 48; object of this arrangement; did not continue many years, 49, note; early minutes of, 50; first Session of the Court, and some of its early proceedings, 51, *et seq.*

Surrender of the government to the crown; motives which led to it; the surrender absolute and unconditional, but, by the instructions to Lord Cornbury, the rights of the Proprietors in the soil were confirmed to them, 40, note.

T

Tax (Destruction of). At Greenwich, in the County of Cumberland, 178; suits brought by the owners; the whigs of the County resolve to raise money for the purpose of defending them, 179; never brought to trial, 180; the Grand Jury refuse to find indictments against the individuals concerned, 181.

Thanksgiving days, appointed by act of Assembly in East Jersey, 209.

Thomas (Gabriel). Notice of his History of Pennsylvania and West New Jersey, 22, note.

Townley (Richard). Signed the address of the Lieut. Governor and Council to the Queen, justifying Lord Cornbury, 70, note.

Trent (William). A native of Scotland; came to this country at an early day, and settled at Philadelphia; Judge of the Su-

preme Court of Pennsylvania, and Speaker of the House of Assembly, 105; purchases Mahlon Stacey's plantation, and removes to New Jersey; represents the County of Burlington in the Assembly, and is made Speaker of the House; appointed Chief Justice of the Supreme Court; his sudden death, 106; Trenton is named after him; he presents to the County the lot on which the first Court House was built, 107.

Trenton. Capital of the State; named after William Trent, 106; originally called "Little Worth," 107.

Tucker (Samuel). President of the Convention which framed the Constitution of the State; Chairman of the Committee of Safety; takes a protection from the British; is active in fomenting complaints against the lawyers; had been Sheriff of Hunterdon, 169; is charged with having taken illegal fees; tried by the Assembly, of which he was a member, and convicted, 170.

Turnbull (Thomas). Information against, for speaking scandalous words of Lord Cornbury; complains that he can get no Attorney to defend him, 82; Court assign him counsel, who advises him to plead guilty; sentence of the Court, 83.

W

Waddell (Rev. James). A pupil of the Rev. Samuel Finley, 191.

West Jersey. Courts in, 24; laws in, under Proprietary government, 205 *et seq.*; criminal code, 207.

West Jersey Proprietors. Concessions of, 27 *et seq.*

Witchcraft. No prosecution for, has ever taken place in New Jersey, 103; trial for in Pennsylvania, at which Penn presided, *ib.*, note.

Witherspoon (Rev. Dr.). Upon the death of Dr. Finley, is elected President of the College of New Jersey; Mr. Stockton is requested to solicit in person his acceptance of it; takes a journey to Scotland for the purpose; the result of his visit, 193; the difficulties which at first prevented his acceptance are removed, 195; espouses the cause of the Colonies; is chosen a delegate to the general Congress, sitting in Philadelphia; the instructions under which the delegates from New Jersey acted, 196; is present during the discussion of the question of Independence; his reply to a member who said, we were "not yet ripe for a Declaration of Independence," 198.

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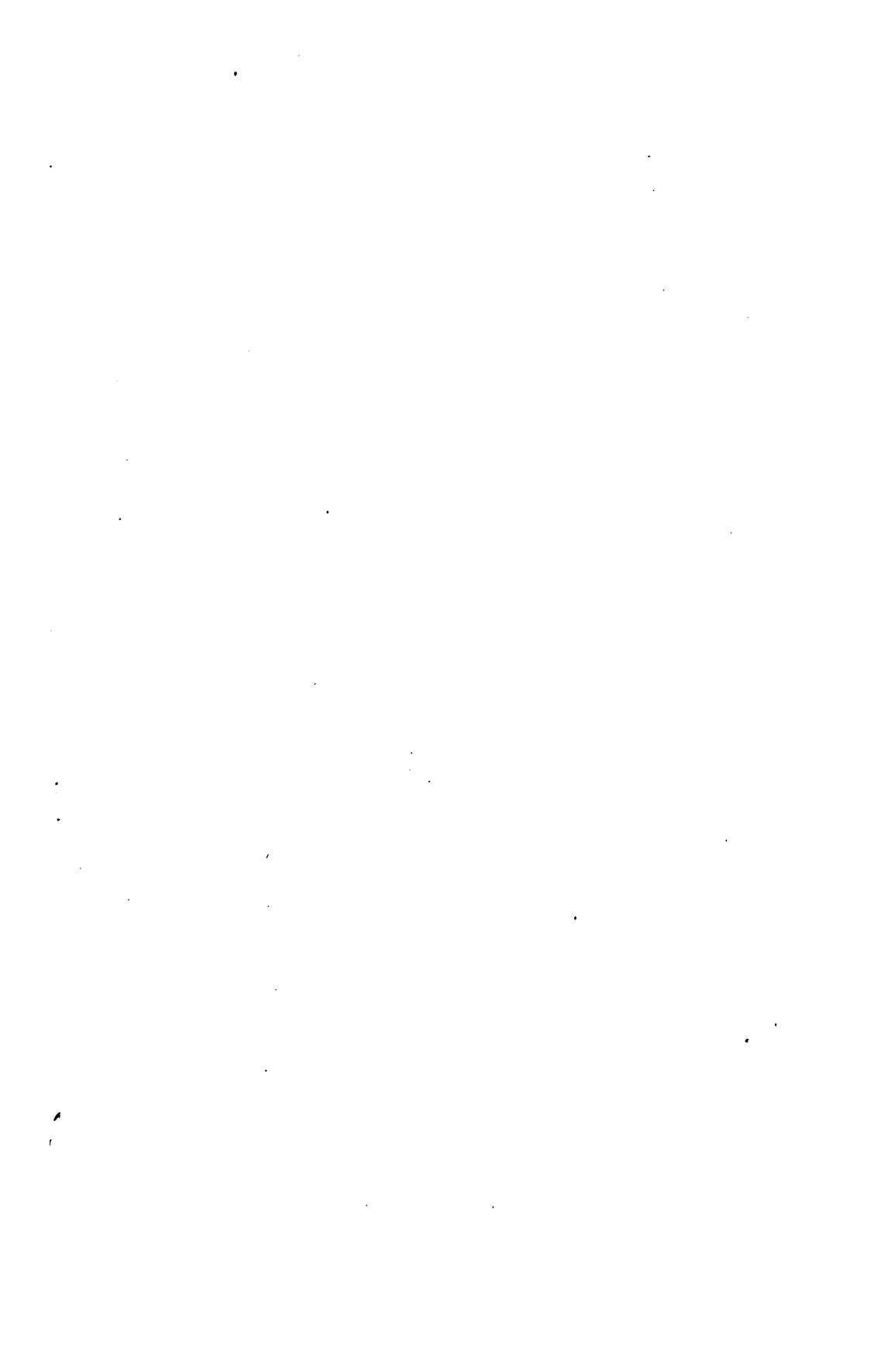
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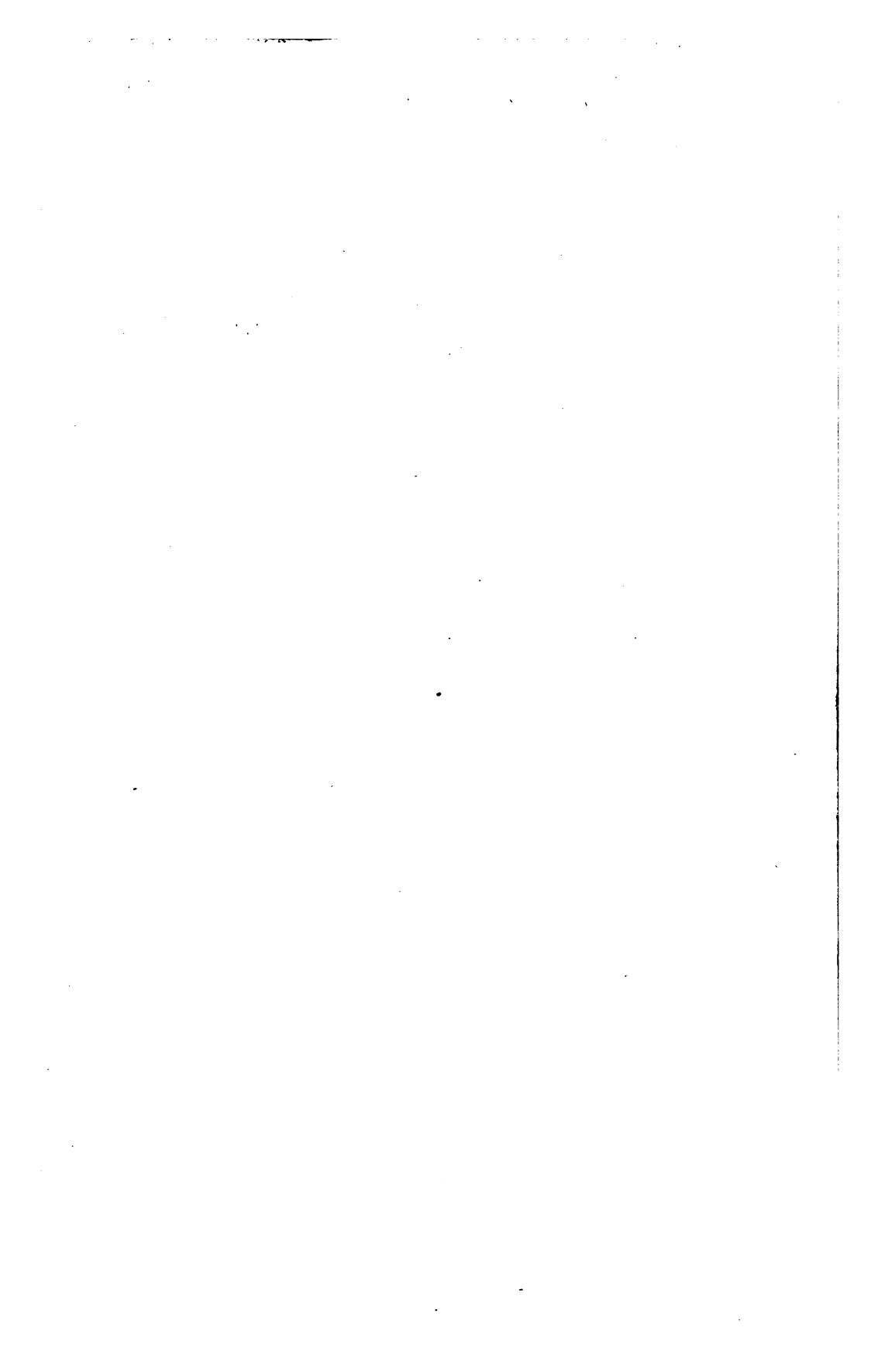
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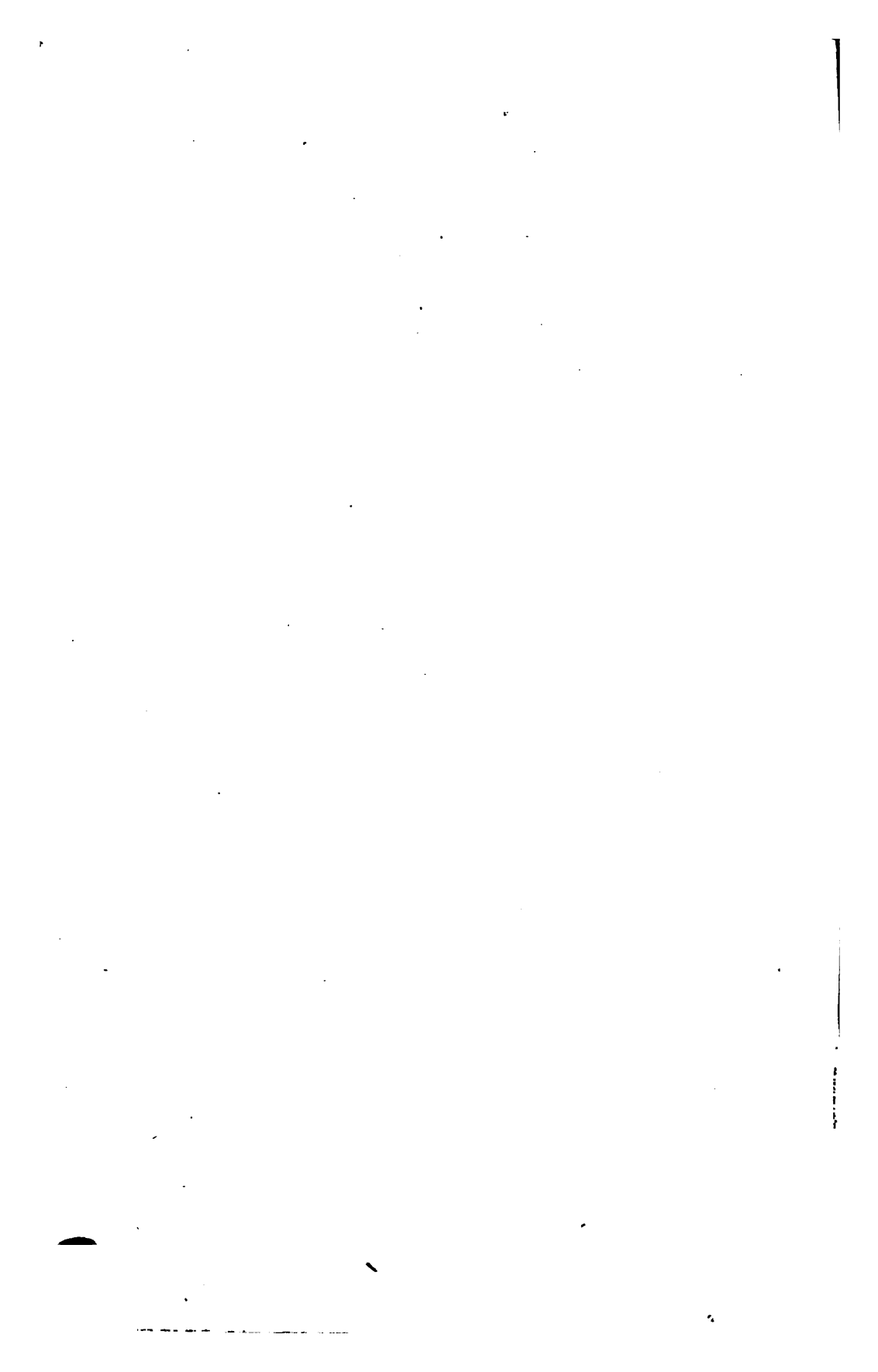
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